

United States
Circuit Court of Appeals

For the Ninth Circuit.

ALICE BARBEE WICK, THEODORE S. TET-
TEMER and JANE DOE TETTEMER, His
Wife (True Christian Name Unknown),
Appellants,

vs.

CHELAN COUNTY, WASHINGTON, a Municipi-
pal Corporation,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Eastern District of Washington,
Northern Division.

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

Mr. J. A. ADAMS, Mr. SAM M. DRIVER, Com-
mercial Bank Bldg., Wenatchee, Washington,
Attorneys for Complainant and Appellee.

Messrs. BERKEY & COWAN, 204-6 Wall St.
Bank Bldg., Spokane, Washington,
Attorneys for Respondents and Appel-
lants*.

In the Superior Court of the State of Washington,
in and for the County of Chelan.

No. 8792.

CHELAN COUNTY, WASHINGTON, a Municipi-
pal Corporation,

Petitioner,

vs.

ALICE BARBEE WICK, THEODORE S. TET-
TEMER and JANE DOE TETTEMER,
His Wife (True Christian Name Unknown),
Respondents.

NOTICE RE CONSTRUCTION OF PUBLIC
HIGHWAY.

The State of Washington, to Theodore S. Tettermer
and Jane Doe Tettermer, His Wife (True
Christian Name Unknown), and Alice Barbee
Wick, Respondent:

*Page-number appearing at the foot of page of original certified
Transcript of Record.

YOU ARE HEREBY NOTIFIED that the petitioner, Chelan County, Washington, a municipal corporation, has filed in this above-entitled court, with the Clerk thereof, a petition showing that the Board of County Commissioners of Chelan County has entered an order declaring the construction of a public highway along the south shore of Lake Chelan from a point in the interior of Lot 3, Section 3, Township 27 N., R. 21 E., W. M., at survey station 420 plus 96.5 of south Lake Shore Road as established and of record, and running thence in a general northwesterly direction a distance of approximately 1.3 miles to survey station 488 plus 00.9, an interior point in the SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of Section 4, Township 27 N., R. 21 E., W. M., being a point of intersection with the Twenty-five Mile Creek Road, to be a public necessity and has laid out and established the said highway in accordance with provisions of Chapter 173, Session Laws of Washington, 1925; and has ordered the Prosecuting Attorney of Chelan County to proceed under the power of eminent domain to acquire such lands and other property and property rights as may be necessary for such new highway in the manner provided by law for the taking of private property for public use; and in order to construct the said highway upon the route laid out and established by the said Board of County [2] Commissioners, it is necessary for the petitioner to acquire a right of way for highway purposes over and across lands and premises owned by respondent and more particularly described as follows, to wit:

A road right of way 60 feet in width over and across Lot 5, Section 4, T. 27 N. R. 21 E. W. M., particularly located and described as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N. R. 21 E. W. M. and run thence N. 0 degrees 44' E., following the section line between said Sections 3 and 4, a distance of 1976.6 feet; thence N. 85 degrees 07' W., 351.3 feet; thence N. 54 degrees 40' W., 762.7 feet; thence N. 35 degrees 11' W., 240.6 feet more or less to the south boundary line of said Lot 5 of Section 4, T. 27 N., R. 21 E. W. M., the initial point and place of beginning of this description. Thence a strip of land 30 feet wide on the right side and 30 feet wide on the left side of the following described line. From the initial point, as hereinabove described, continue thence N. 35 degrees 11' W., 30 feet; thence on a 2 degree curve to the left having a central angle of 6 degrees 28' a distance of 323.5 feet more or less to the west line of said Lot 5 of Section 4, T. 27 N. R. 21 E. W. M., the end of this description, which described parcel of land contains 0.49 acre more or less.

Also, a road right of way over and across the northeast corner of the SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, T. 27 N. R. 21, E. W. M., being only that part of the right of way of the South Lake Shore Extension Road that overlaps the said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said

Section 3, and being more particularly located and described as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N. R. 21 E. W. M., and run thence N. 0 degrees 44' E., following the section line between said Sections 3 and 4 a distance of 1976.6 feet; thence S. 85 degrees 07' E. 240.7 feet; thence S. 51 degrees 32' E., 640.5 feet; thence S. 85 degrees 48' E., 809.1 feet; thence S. 48 degrees 50' E., 752.4 feet; thence on a 6 degree curve to the left, having a radius of 955 feet, a distance of 66 feet more or less to the northeast corner of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, the initial point and place of beginning of this description. Thence an irregular shaped piece of land bounded by a line running south from the initial point as hereinabove described, following the east boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, to a point 30 feet distant from the survey line of said South Lake Shore Extension Road; thence in a northwesterly direction on a curve having a radius of 985 feet, being parallel and 30 feet distant from survey alignment curve at this place, to the north boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3; thence east following the north boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, to the initial point and place of beginning, which described parcel of land contains 0.02 acre more or less.

The object of said proceeding is to ascertain and determine the compensation to be made in money to the owner or owners, respectively, and to all tenants, encumbrancers and others interested, [3] for the taking or injuriously affecting the lands, real estate and premises above described, in the manner set forth in said petition, and for a release from all liability for all damages to the adjoining lands of the respondent not taken, in any manner arising from the taking of the above-described property and the construction of a public highway thereon, and to obtain a decree that the contemplated use for which said lands, real estate, premises and other property are sought to be appropriated is a public object and use and that the public interest requires the laying out, establishment and construction of said highway, and that said lands, real estate, premises and other property sought to be appropriated and injuriously affected are required and necessary for the laying out, establishment and construction of said highway.

NOTICE IS FURTHER GIVEN, that on the 30th day of January, 1929, at the hour of 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, the petitioner will present said petition and proof in support thereof to said Superior Court in the courthouse at Wenatchee, Washington, for hearing and determination and for the fixing of a time at which a jury shall be called to determine the amount of compensation to be made and the parties to whom the same shall be paid.

Dated this 5th day of January, 1929.

CHELAN COUNTY, WASHINGTON,

Petitioner.

By J. A. ADAMS,
Prosecuting Attorney.

Office and Post Office Address:

Commercial Bank Building,

Wenatchee, Chelan County, Washington.

Filed Jan. 5, 1929. L. T. Armstrong, Clerk. G.
Simon, Deputy. [4]

[Title of Court and Cause—No. 8792.]

PETITION.

To the Honorable Superior Court of the State of
Washington in and for Chelan County, and to
the Judge Thereof:

The petitioner alleges:

I.

That at all times herein mentioned the petitioner,
Chelan County, Washington, was and now is a duly
constituted, organized and existing county and
legal subdivision of the State of Washington.

II.

On the 30th day of October, the Board of County
Commissioners of Chelan County, Washington, by
unanimous vote, passed a resolution and caused
the same to be entered upon the minutes of said
Board, declaring that the laying out and establish-
ment of a county road along the south shore of

Lake Chelan from a point in the interior of Lot 3, Section 3, Township 27 N., R. 21 E., W. M., at survey station 420 plus 96.5 of south Lake Shore Road as established and of record, and running thence in a general northwesterly direction a distance of approximately 1.3 miles to survey station 488 plus 00.9 an interior point in the SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of Section 4, Township 27 N., R. 21 E., W. M., being a point of intersection with the Twenty-five Mile Creek Road, to be a public necessity and declaring the intention of said Board to lay out and establish said road and directing the [5] County Engineer to report upon said project, all in accordance with Chapter 173, Session Laws of Washington, 1925.

III.

Thereupon the County Engineer made an examination of said proposed road and a survey thereof, and made a report to said Board in writing, as required by law, in which report the County Engineer found among other things, said proposed road to be practicable and the construction thereof to be a public necessity, and filed with said report a map of the proposed road, as required by law, together with his field-notes and profiles of such survey. And thereafter and on the 30th day of October, 1928, the Board of County Commissioners of Chelan County set the matter of the laying out and establishment of said road and the report of the County Engineer thereon, for hearing on November 23, 1928, at the office of the Board of County Commissioners in the courthouse at Wenat-

chee, Washington, and caused notice of said hearing to be posted and published in the form and for the length of time provided by law.

IV.

On the said 23d day of November, 1928, a public hearing on the laying out and establishment of said road and upon the report of the County Engineer thereon, was held by said Board of County Commissioners, and the said Board made and entered its order finding said road to be a public necessity and establishing the said road as a public highway, on the route designated and described in the report of the said County Engineer. It was and is further provided by said order of the Board of County Commissioners on November 23, 1928, that the Prosecuting Attorney of Chelan County be and he is thereby directed to proceed under the power of eminent domain to acquire such lands and other property or property rights as may be necessary for such new highway in the manner provided by law for the taking of private property for public use, and commence [6] and prosecute to a conclusion condemnation suits for the acquisition of property and rights of way for said new highway as so laid out and established.

V.

Petitioner has been unable to agree with the respondent for the purchase of the right of way hereinafter described, and in order to construct the said highway upon the route laid out and established by the said Board of County Commissioners,

it is necessary for the petitioner to acquire a right of way for highway purposes more particularly described as follows, to wit:

A road right of way 60 feet in width over and across Lot 5, Section 4, T. 27 N. R. 21 E. W. M., particularly located and described as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N. R. 21 E. W. M. and run thence N. 0 degrees 44' E., following the section line between said Sections 3 and 4, a distance of 1976.6 feet; thence N. 85 degrees 07' W., 351.3 feet; thence N. 54 degrees 40' W., 762.7 feet; thence N. 35 degrees 11' W., 240.6 feet more or less to the south boundary line of said Lot 5 of Section 4, T. 27 N., R. 21 E. W. M., the initial point and place of beginning of this description. Thence a strip of land 30 feet wide on the right side and 30 feet wide on the left side of the following described line. From the initial point, as hereinabove described, continue thence N. 35 degrees 11' W., 30 feet; thence on a 2 degree curve to the left having a central angle of 6 degrees 28' a distance of 323.5 feet more or less to the west line of said Lot 5 of Section 4, T. 27 N. R. 21 E. W. M., the end of this description, which described parcel of land contains 0.49 acre more or less.

ALSO, a road right of way over and across the northeast corner of the SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, T. 27 N. R. 21, E. W. M.,

being only that part of the right of way of the South Lake Shore Extension Road that overlaps the said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said Section 3, and being more *particularly* located and described as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N. R. 21 E. W. M., and run thence N. 0 degrees 44' E., following the section line between said Sections 3 and 4 a distance of 1976.6 feet; thence S. 85 degrees 07' E. 240.7 feet; thence S. 51 degrees 32' E., 640.5 feet; thence S. 85 degrees 48' E., 809.1 feet; thence S. 48 degrees 50' E., 752.4 feet; thence on a 6 degree curve to the left, having a radius of 955 feet, a distance of 66 feet more or less to the northeast corner of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, the initial point and place of beginning of this description. Thence an irregular shaped piece of land bounded by a line running south from the initial point as hereinabove described, following the east boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, to a point 30 feet distant from the survey line of said South Lake Shore Extension Road; thence in a northwesterly direction on a [7] curve having a radius of 985 feet, being parallel and 30 feet distant from survey alignment curve at this place, to the north boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3; thence east following the north boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, to the initial point

and place of beginning, which described parcel of land contains 0.02 acre more or less.

VI.

That the object for which this proceeding is brought is to ascertain and determine the compensation to be made in money, to the owner or owners, respectively, and to all tenants, encumbrancers and *other* interested, for the taking or injuriously affecting the lands, real estate, premises and other property above described in the manner above set forth, and for a release from all liability for all damages to the adjoining lands of the respondent not taken, in any manner arising from the taking of the above-described property and the construction of a public highway thereon.

VII.

The object for which said lands, real estate, premises and other property are sought to be appropriated, acquired and injuriously affected by your petitioner is a public object and use, and that the public interest required the construction of the said highway upon the above-described right of way, and the said lands, real estate, premises and other property sought to be appropriated and injuriously affected are required and necessary for the laying out, establishment and construction of said highway.

VIII.

The following are the names of each and every owner, encumbrancer and person or party interested in the above-described property, or any part

thereof, so far as the same can be ascertained from the public records or otherwise, namely, Alice Barbee Wich, Theodore S. Tettermer and Jane Doe Tettermer, his wife (true Christian name unknown).

[8]

IX.

In order to acquire title to said property above described, it is necessary for your petitioner to condemn said property and to acquire the same for the public purposes aforesaid by appropriate proceedings under and by virtue of the power of eminent domain conferred upon your petitioner in common with other like *cororations* in and by the laws of the State of Washington, and your petitioner makes this petition for said purposes.

WHEREFORE, your petitioner prays that after due notice given according to law, it may be adjudged and decreed by this court that the contemplated use for which the above-described land, real estate, premises and other property are sought to be appropriated is really a public object and use, and that the public interest requires the laying out, establishment and construction of said highway, and that said land, real estate, premises and other property are required and necessary for the laying out, establishment and construction of said highway; that a jury be impaneled to ascertain and compensation to be made in money to the above-named owner of said land, for the taking and injuriously affecting the same, or in case a jury be waived, then that the compensation to be made as aforesaid be ascertained and determined by the

court or Judge thereof, and that the court apportion the damages so found among the persons entitled thereto; and that a judgment or decree be entered when said compensation shall have been determined to the effect that upon payment thereof by the petitioner full title to said property shall be at once vested in the petitioner for the uses set forth therein, and for such other relief as may be proper in the premises.

Dated this 5th day of January, 1929.

CHELAN COUNTY, WASHINGTON,

Petitioner.

By J. A. ADAMS,

Prosecuting Attorney. [9]

State of Washington,
County of Chelan,—ss.

John Godfrey, being first duly sworn, on oath deposes and says: That he is the duly elected, qualified and acting County Auditor of Chelan County, Washington, and *Ex-officio* Clerk of the Board of County Commissioners of said county, and as such officer makes this verification for and on behalf of the petitioner herein; that he has read the foregoing petition, knows the contents thereof and believes the same to be true.

JOHN GODFREY.

Subscribed and sworn to before me this 5th day of January, 1929.

[Superior Court Seal] L. T. ARMSTRONG,

Clerk of Superior Court. [10]

[Title of Court and Cause—No. 8792.]

AFFIDAVIT FOR PUBLICATION.

State of Washington,
County of Chelan,—ss.

S. M. Driver, being first duly sworn on oath deposes and says: That he is Deputy Prosecuting Attorney of Chelan County, Washington, a municipal corporation, petitioner in the above-entitled cause, and one of the attorneys for said petitioner; that he makes this affidavit for and on petitioner's behalf as a basis for the publication of notice to the respondents Alice Barbee Wick, and Theodore S. Tettermer and Jane Doe Tettermer, his wife (true Christian name unknown).

That the said Alice Barbee Wick, Theodore S. Tettermer and Jane Doe Tettermer, respondents above named, and each of them, is a person claiming an interest in the real property described in the petition and sought to be condemned by the petitioner herein; and that the said Alice Barbee Wick is a nonresident of the State of Washington. Affiant is informed and believes that said Alice Barbee Wick is a resident of the city of Philadelphia, in the State of Pennsylvania, and that her last-known address is and was "Care of Mr. Joseph B. Thomas, suite 27, Transportation Building, 26 South 15th Street, Philadelphia, Pennsylvania"; that on the 4th day of January, 1929, affiant deposited in the postoffice at Wenatchee, Washington, with postage fully prepaid addressed to said Alice Barbee Wick

at the address above given, a true and correct [11] copy of the notice and petition in the above-entitled cause.

That Theodore S. Tettermer and Jane Doe Tettermer, his wife (true Christian name unknown), respondents above named, and each of them, is a non-resident of the State of Washington. Affiant is informed and believes that said Theodore S. Tettermer and Jane Doe Tettermer, his wife, and each of them, *it is* resident of the city of Philadelphia in the State of Pennsylvania, and that the last-known address of them and each of them is and was "Philadelphia, Pennsylvania." That on the 4th day of January, 1929, affiant deposited in the postoffice at Wenatchee, Washington, with postage fully prepaid, addressed to said Theodore S. Tettermer and Jane Doe Tettermer, his wife, at the address above given, and to each of them, a true and correct copy of the notice and petition in the above-entitled cause.

S. M. DRIVER.

Subscribed and sworn to before me this 5th day of January, 1929.

J. A. ADAMS,

Notary Public in and for the State of Washington,
Residing at Wenatchee.

Filed Jan. 5, 1929. L. T. Armstrong, Clerk.
G. Simon, Deputy. [12]

[Title of Court and Cause—No. 8792.]

NOTICE OF PETITION AND BOND FOR RE-
MOVAL.

To the Above-named Petitioner, and to J. A. Adams,
Your Attorney:

You and each of you will please take notice that Alice Barbee Wick, Theodore S. Tettermer and Sallie E. Tettermer, his wife, the above-named respondents, appearing herein, specially for the purpose only of removing the above-entitled case to the District Court of the United States for the Eastern District of Washington, Northern Division, will, on Wednesday, the 30th day of January, 1929, at the hour of 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, in the above-entitled court, present petition and bond herein as required by law for the removal of said cause from the above-entitled court to the District Court of the United States for the Eastern District of Washington, Northern Division, said bond in the sum of \$500.00 given on such removal and according to law and the requirements of the statute in such case made and provided, and copies of said petition and bond are herewith served upon you, and that after the filing of said petition and bond, to wit: at 9:30 o'clock in the forenoon on the 30th day of January, 1929, or as soon thereafter as counsel can be heard, the said respondents will present and call to the attention of said Superior Court of the State of Washington for Chelan County, at the Court House

of said Chelan County, at [13] Wenatchee, Washington, the said petition and bond and move said court to accept said petition and bond and approve said bond, and for an order of removal of said cause from the above-entitled court to said District Court of the United States for the Eastern District of Washington, Northern Division. Said motion for removal is to be made upon the grounds stated in said petition and bond, said petition and bond so filed and presented, and on all the records and files in the case.

J. D. CAMPBELL,

Attorney for Said Respondents, Appearing Specially as Aforesaid.

Copy of the foregoing notice and of the bond and petition in the above-entitled case for removal received this — day of January, 1929.

Attorney for Petitioner.

Filed Jan. 25, 1929. L. T. Armstrong, Clerk.
G. Simon, Deputy. [14]

[Title of Court and Cause—No. 8792.]

PETITION FOR REMOVAL TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

I.

Your petitioners, Alice Barbee Wick, Theodore S. Tettermer and Sallie E. Tettermer, his wife, respondents above named, appearing specially for the pur-

pose only of removing the above-entitled cause to the District Court of the United States for the Eastern District of Washington, Northern Division, respectfully shows to this Honorable Court that said petitioners and each of them are respondents in said suit, which is a civil suit in its nature, and that the matter now in dispute in this said cause exceeds the sum of value of \$3,000.00 to said petitioners and each of them, exclusive of interest and costs.

II.

Your petitioners show to this Honorable Court that there is in said suit a separable controversy which is wholly between citizens of different states. That said petitioners and each of them were at the time of bringing said suit, ever since have been, and still are, citizens and residents of the State of Pennsylvania, and that said petitioners and each of them are not now and never have been residents of the State of Washington, and that said Chelan County, Washington, a municipal corporation, is a resident of and a Washington corporation. [15]

III.

That said controversy is of the following nature, viz.: A proceeding by petition for the purpose as alleged therein to establish a county road along the south shore of Lake Chelan from a point in the interior of lot 3, Section 3, Township 27, N. of Range 21, E. W. M., at survey station 420 plus 96.5 of south Lake Shore road as established and of record, and running thence in a general northwesterly direction a distance of approximately 1.3 miles to survey station 488 plus 00.9, an interior point, in

the SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of Section 4, Township 27, North of Range 21, E. W. M., being a point of intersection of the Twenty-five Mile Creek Road, under the power of eminent domain and to acquire such lands and other property or property rights as may be necessary for such new highway in the manner provided by law for the taking of private property for public use. Said petitioner in said proceeding is attempting to acquire a right of way for highway purposes more particularly described as follows:

A road right-of-way 60 feet in width over and across lot 6, Section 4, Township 27 N., R. 21 E., W. M., particularly located and described as follows, to-wit:

Tying to the section corner common to sections 3, 4, 9 and 10, T. 27 N., R. 21 E., W. M., and runs thence North 0 degrees 44' east, following the section line between said sections 3 and 4, a distance of 1976.6 feet; thence 85° 07' west 351.3 feet; thence north 54° 40' west 762.7 feet; thence north 35° 11' west 240.6 feet more or less to the south boundary line of said lot 5 of section 4, Tp. 27 N., of R. 21 E., W. M., the initial point and place of beginning of this description. Thence a strip of land 30 feet wide on the right side and 30 feet wide on the left side of the following described line; From the initial point as hereinabove described, continue thence north 35° 11' west 30 feet; thence on a 2 degree curve to the left having a central angle of 6° 28' a distance of 323.5 feet more

or less to the west line of said lot 5 of Sec. 4, Tp. 27 N., R. 21 E., W. M., the end of this description, which described parcel of land contains 0.49 acres more or less.

Also a road right-of-way over and across the northeast corner of the SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Sec. 3, Tp. 27 N., R. 21 E., W. M., being only that part of the right-of-way of the South Lake Shore Extension Road that overlaps the said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said Sec. 3, and being more particularly located and described as follows, to-wit:

Tying to the section corner common to sections 3, 4, 9 and 10, Tp. 27 N., R. 21 E., W. M., and run thence north 0 degrees 44' east following the section line between said sections 3 and 4 a distance of 1976.6 feet; thence south 85° 07' east 240.7 feet; thence south 51° 32' east 640.5 feet; thence south 85° 48' east 809.1 feet; thence south 48° 50' east [16] 752.4 feet; thence on a 6 degree curve to the left, having a radius of 955 feet, a distance of 66 feet more or less to the northeast corner of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of section 3, the initial point and place of beginning of this description. Thence an irregular shaped piece of land bounded by a line running south from the initial point as hereinabove described, following the east boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of section 3, to a point 30 feet distant from the survey line of said south Lake Shore Extension road; thence in a northwest-

erly direction on a curve having a radius of 985 feet, being parallel and 30 feet distant from survey alignment curve at this place, to the north boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of section 3; thence east following the north boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of section 3 to the initial point and place of beginning, which described parcel of land contains 0.02 acre more or less;

The further object being to ascertain and determine the compensation to be made in money to the owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting the lands, real estate, premises and other property above described in the manner above set forth and for a release from all liability for all damages to the adjoining lands of respondents not taken, in any manner arising from the taking of the above-described property for construction of a public highway.

IV.

It is further claimed in said petition that the object for which said lands, real estate, premises and other property are *south* to be appropriated, acquired and injuriously affected by petitioner is a public object and use, and that the public interest required the construction of the said highway upon the above-described right-of-way, and the said lands, real estate, premises and other property sought to be appropriated and injuriously affected are acquired and necessary for the laying out, establishment and construction of said highway.

V.

That the respondents herein are the persons and the only persons alleged to be interested in the above-described property, or any part thereof.

VI.

It is further alleged in said petition that in order to acquire title to said property above described it is necessary for said petitioner [17] to condemn said property and to acquire same for the public purposes aforesaid by appropriate proceedings under and by virtue of the power of eminent domain conferred upon said petitioner by the laws of the State of Washington.

VII.

That your petitioners desire to remove said cause to the United States District Court, Eastern District of Washington, Northern Division, and your petitioners make and file herein a bond in the sum of \$500.00 with good and sufficient surety for said respondents and each of them entering said District Court of the United States for the Eastern District of Washington, Northern Division, wherein thirty days from the date of the filing of this petition a certified copy of the record of said cause, and for paying all costs that may be awarded by said District Court if it shall hold the said suit was wrongfully or improperly removed thereto.

WHEREFORE your petitioners pray that this Honorable Court proceed no further herein except to accept this petition and said bond as required by law, and to order said case to be removed to the

District Court of the United States, Eastern District of Washington, Northern Division, and to order a transcript of the record made and filed in the District Court as provided by law, and to stay all further proceedings herein.

J. D. CAMPBELL,

Attorneys for Petitioners Herein Appearing Specially as Aforesaid.

Office and Postoffice Address:

1210 Old National Bank Building,
Spokane, Washington. [18]

State of Washington,
County of Spokane,—ss.

J. D. Campbell, being first duly sworn, on oath states *states* that he is one of the attorneys for petitioners, Alice Barbee Wick, Theodore S. Tettermer and Sallie E. Tettermer, his wife, respondents in the above-entitled case, and makes this verification on behalf of said petitioners and respondents. That he has read the foregoing petition, knows the contents thereof, and the same is true of his own knowledge except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

J. D. CAMPBELL.

Subscribed and sworn to before me this 22 day of January, 1929.

[Seal]

JOSEPH ROSSLOW,

Notary Public in and for the State of Washington,
Residing at Spokane.

Filed Jan. 25, 1929. L. T. Armstrong, Clerk.
G. Simon, Deputy. [19]

[Title of Court and Cause—No. 8792.]

BOND ON REMOVAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Alice Barbee Wick, Theodore S. Tette mer and Sallie E. Tette mer, husband and wife, respondents above, as principals, and United States Fidelity and Guaranty Company, a corporation organized and existing under and by virtue of the laws of the State of Maryland, duly authorized to do business in the State of Washington, as surety, are held and firmly bound unto Chelan County, the petitioner in the above-entitled cause, its successors and assigns, in the penal sum of Five Hundred Dollars (\$500), lawful money of the United States of America, for the payment of which sum, well and truly to be made, the said principals hereby bind themselves, their heirs, administrators, executors, and the said surety company hereby binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22d day of January, A. D. 1929.

UPON CONDITION, NEVERTHELESS, that whereas the said respondents Alice Barbee Wick, Theodore S. Tette mer and Sallie E. Tette mer, husband and wife, simultaneously with the filing of this bond intend to file their petition in the above-

entitled suit or proceeding in the above-entitled court, for the removal of such suit or proceeding into the District Court of the United States [20] in the district where such suit or proceeding is pending, to wit: the District Court of the United States in and for the Eastern District of Washington, Northern Division, according to the provisions of the Act of Congress in such case made and provided,—

Now, if the said Alice Barbee Wick, Theodore S. Tettemer and Sallie E. Tettemer, husband and wife, shall within thirty (30) days from the date of filing of said petition for removal, enter into the said District Court of the United States in and for the Eastern District of Washington, Northern Division, a certified copy of the record in said suit or proceeding, and shall well and truly pay or cause to be paid all costs that may be awarded by said District Court of the United States in and for the Eastern District of Washington, Northern Division, if said Court shall hold that *shall hold that* said suit or proceeding was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

ALICE BARBEE WICK. (Seal)

THEODORE S. TETTEMER. (Seal)

SALLIE E. TETTEMER. (Seal)

UNITED STATES FIDELITY AND
GUARANTY CO.

[Seal] By WILLIS E. MAHONEY,
Attorney-in-fact.

The foregoing bond is hereby approved; accepted this 30 day of January, 1929.

W. O. PARR,
Judge of the Above-entitled Court.

Filed and recorded in Civil Bonds, Journal 3, pages 359-60. Jan. 25, 1929. L. T. Armstrong, Clerk. G. Simon, Deputy. [21]

[Title of Court and Cause—No. 8792.]

AFFIDAVIT OF SERVICE OF NOTICE OF
PETITION AND BOND ON REMOVAL.

State of Washington,
County of Chelan,—ss.

G. H. Strevel, being first duly sworn, upon oath deposes and says that at all times herein mentioned he was and now is a citizen of the United States of America and resident of the State of Washington, over the age of twenty-one years, not a party to the above-entitled action, and competent to be a witness therein, that on the 24 day of January, 1929, he served the annexed notice of petition and bond for removal upon the defendant Alice Barbee Wick, by delivering to J. A. Adams, as *attorney* by delivering in the hands of and leaving with the said J. A. Adams on the date aforesaid at his office in Wenatchee, Chelan County, Washington, a full, true and correct copy of the annexed notice of petition and bond for removal.

Signed—G. H. STREVEL.

Subscribed and sworn to before me this 25 day of January, 1929.

[Seal]

L. T. ARMSTRONG,
County Clerk.
By C. W. Armstrong,
Dep.

Fee60
Service	
Mileage20
	—
	.80

Filed Jan. 25, 1929. L. T. Armstrong, Clerk. G. Simon, Deputy. [22]

[Title of Court and Cause—No. 8792.]

AFFIDAVIT OF PUBLICATION.

State of Washington,
County of Chelan,—ss.

I, Carrie I. Skinner, being first duly sworn, on oath, depose and say: That I am the principle clerk of the World Publishing Co., a corporation organized and existing under the laws of the State of Washington, the owner and publisher of "The Wenatchee Daily World," a legal daily newspaper printed and published at the office of the owner and publisher thereof in the City of Wenatchee, County of Chelan, and State of Washington, since prior to the year 1910; that I make this affidavit for and on behalf of said corporation; that said newspaper is a newspaper of general circulation in *siad* county

and state, and has at all times been and now is printed and published in the English language, and that the notice in the Matter of Chelan County vs. Alice Barbee Wick, Theodore S. Tetteimer *and* et al., No. —, a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper once each week for a period of 4 consecutive weeks beginning on the 7 day of January, 1929, and ending on the 28 day of January, 1929, both dates inclusive, and that said newspaper was regularly distributed to its subscribers during all of said period.

That the full amount of the fee charged for the foregoing publication is the sum of \$17.25, which amount has been paid [23] in full.

CARRIE I. SKINNER.

Subscribed and sworn to before me this 30th day of January, 1929.

J. A. ADAMS,
Notary Public in and for the State of Washington,
Residing at Wenatchee, Chelan County.

(Newspaper Clipping Attached.)

J. A. ADAMS, COMMERCIAL BANK BLDG.

No. —

NOTICE.

In the Superior Court of the State of Washington,
in and for the County of Chelan.

CHELAN COUNTY, WASHINGTON, a Municipal Corporation,

Petitioner,

vs.

ALICE BARBEE WICK, THEODORA S. TET-
TEMER and JANE DOE TETTEMER, His
Wife (True Christian Name Unknown),
Respondents.

The State of Washington, to Theodore S. Tettermer
and Jane Doe Tettermer, His Wife (True Chris-
tian Name Unknown), and Alice Barbee Wick,
Respondents:

YOU ARE HEREBY NOTIFIED that the peti-
tioner, Chelan County, Washington, a municipal
corporation, has filed in this above-entitled court,
with the clerk thereof, a petition showing that the
Board of County Commissioners of Chelan County
has entered an order declaring the construction of a
public highway along the south shore of Lake Chelan
from a point in the interior of Lot 3, Section 3,
Township 27 NR 21, EWM at survey station 420
plus 96.5 of South Lake Shore Road, as established

and of record, and running thence in a general north-westerly direction a distance of approximately 1.3 miles to survey station 488 plus 00.9, an interior [24] point in the SW $\frac{1}{4}$, NE $\frac{1}{4}$ of Section 4, Township 27 N, R. 21, EWM, being a point of intersection with the Twenty-five Mile Creek Road, to be a public necessity and has laid out and established the said highway in accordance with provisions of Chapter 173, Session Laws of Washington, 1925; and has ordered the Prosecuting Attorney of Chelan County to proceed under the power of eminent domain to acquire such lands and other property and property rights as may be necessary for such new highway in the manner provided by law for the taking of private property for public use; and in order to construct the said highway upon the route, laid out and established by the said Board of County Commissioners it is necessary for the petitioner to acquire a right of way for highway purposes over and across lands and promises owned by respondent and more particularly described as follows, to-wit:

A road right of way 60 feet in width over and across Lot 5, Section 4, T 27 N R 21 EWM, particularly located and described as follows, to-wit:

Tying to the section corner common to Section 3, 4, 9 and 10 T 27 N. R. 21, EWM, and run thence N. 0 deg. 44 min. E. following the section line between said sections 3 and 4 a distance of 1976.6 feet; thence N. 85 deg. 07 min. W, 351.3 feet; thence N. 54 deg. 40 min. W. 762.7 feet, thence N. 35 deg. 11 min. W. 240.6 feet, more or less, to the south boundary line of said Lot 5 of Section 4 T.

27 N. R. 21 E. W. M., the initial point and place of beginning of this description. Thence a strip of land 30 feet wide on the right side and 30 feet wide on the left side of the followinn described line. From the initial point, as hereinabove described, continue thence No. 35 Deg. 11 min. W 30 feet; thence on a 2 deg. curve to the left having a central angle of 6 deg. 28 min. a distance of 323.5 feet, more or less, to the west line of said Lot 5 of Section 4, T. 27 N. R. 21, E. W. M., the end of this description which described parcel of land contains [25] 0.49 acres more or less.

Also, a road right of way over and across the northeast corner of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, T. 27 N. R. 21, E. W. M. being only that part of the right of way of the South Lake Shore Extension Road that overlaps the said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 3, and being more particularly described and located as follows, to-wit:

Tying to the section corner common to Section 3, 4, 9 and 10, T 27 N R 21, E.W.M. and run thence N. 0 deg. 44 min. E. following the section line between said sections 3 and 4 a distance of 1976.6 feet; thence S. 85 deg. 07 min. E. 240.7 feet; thence S. 51 deg. 32 min. E. 640.5 feet; thence S. 85 deg. 48 min. E. 809.1 feet; thence S. 48 deg. 50 min. E. 752.4 feet; thence on a 6 deg. curve to the left, having a radius of 955 feet, a distance of 66 feet, more or less, to the northeast corner of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, the initial point and place of beginning of this description. Thence an irregular shaped piece of land bounded by a line running

south from the initial point as hereinabove described, following the east boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, to a point 30 feet distant from the survey line of said South Lake Shore Extension Road; thence in a northwesterly direction on a curve having a radius of 985 feet; being parallel and 30 feet distant from survey alignment curve at this place, to the north boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, thence east following the north boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, to the initial point and place of beginning, which described parcel of land contains 0.02 acre, more or less.

The object of said proceeding is to ascertain and determine the compensation to be made in money to the owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting the lands, real estate and premises above described, in the manner set forth in said [26] petition and for a release from all liability for all damages to the adjoining lands of the respondent not taken, in any manner arising from the taking of the above described property and the construction of a public highway thereon, and to obtain a decree that the contemplated use for which said lands, real estate, premises and other property are sought to be appropriated is a public object and use and that the public interest requires the laying out, establishment and construction of said highway, and that said lands, real estate, premises and other property sought to be appropriated and injuriously affected are required and necessary

for the laying out, establishment and construction of said highway.

Notice is further given, That on the 30th day of January, 1929, at the hour of 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, the petitioner will present said petition and proof in support thereof to said Superior Court in the courthouse at Wenatchee, Washington, for hearing and determination and for the fixing of a time at which a jury shall be called to determine the amount of compensation to be made, and the parties to whom the same shall be paid.

Dated this 5th day of January, 1929.

CHELAN COUNTY, WASHINGTON,

Petitioner.

By J. A. ADAMS,

Prosecuting Attorney.

Office and Post Office Address:

Commercial Bank Building,

Wenatchee, Chelan County, Wash.

Filed Jan. 30, 1929. L. T. Armstrong, Clerk. G. Simon, Deputy. [27]

(Receipts Attached.)

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

MARGARET ROSBOROUGH,

(Signature or name of addressee.)

(Signature of addressee's agent.)

Date of Delivery—Jan. 14, 1929.

Post Office Department.

Official Business.

Registered Article No. S-728.

Insured Parcel No. —.

RETURN TO—J. A. Adams, Pros. Attorney of
Chelan Co.

Street and Number or Post Office Box—34 Commer-
cial Bank Bldg.

Post Office at—Wenatchee,

State—Washington.

Post Office Department.

Official Business.

Registered Article No. S-736.

Insured Parcel No. —.

Return to—J. A. Adams, Pros. Attorney of Chelan
Co.

(Name of Sender.)

Street and Number, or Post Office Box—34 Commer-
cial Bank Bldg.

Post Office at—Wenatchee,

State—Washington.

RETURN RECEIPT. 83424

Received from the Postmaster the Registered or
Insured Article, the original number of which ap-
pears on the face of this Card.

JOSEPH B. THOMAS,

(Signature or name of addressee.)

For Miss ALICE BARBREE WICK,

(Signature of address's agent.)

Date of delivery, Jan. 14th, 1929. [28]

[Title of Court and Cause—No. 8792.]

ORDER OF REMOVAL.

The petition of Alice Barbee Wick, Theodore S. Tettermer and Sallie E. Tettermer, his wife, respondents in the above-entitled cause, having regularly come on for hearing and determination before the court on this 30th day of January, 1929, and said respondents appearing specially for the purpose only of removing said cause to the District Court of the United States, Eastern District of Washington, Northern Division; and it appearing to the court that said respondents have made and filed herein, petition for removal in the form, at the time, and in the manner, and in all respects as provided by law, and that they have filed herein a bond in the penal sum of \$500.00 in due form and duly executed with good and sufficient surety, duly conditioned for said respondents entering in said District Court, within thirty days from the filing of said petition, a certified copy of the record of the Superior Court, and for paying all costs that may be awarded by said District Court if it shall hold that said suit was improperly or wrongfully removed thereto, and that written notice of said petition and bond was given to said petitioner prior to the filing of said petition and bond, in the form, at the time and in the manner provided by law, and that it is proper for said cause to be removed *to be removed* to said United States District Court,— [29]

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that said petition and bond be and they are hereby accepted; that the above-entitled case be and it is hereby removed to said District Court of the United States, Eastern District of Washington, Northern Division; and that the Clerk of this court be, and he is hereby directed to prepare and certify forthwith a transcript of the record in said cause for filing in the said District Court within the time allowed by law; and that all other proceedings in this court be stayed.

Done in open court this 30 day of January, 1929.

W. O. PARR,
Judge.

Filed and Recorded in Civil Journal, Vol. 14, pages 365-6, Jan. 30, 1929. Compared by G & C. L. T. Armstrong, Clerk. G. Simon, Deputy. [30]

In the Superior Court of the State of Washington.

APPEARANCE DOCKET—VOL. 28.

Page 317.

No. 8792.

CHELAN COUNTY, WASHINGTON, a Municipal Corporation,

Plaintiff,

vs.

ALICE BARBREE WICK, THEODORE S. TETTEMER and JANE DOE TETTEMER, His Wife (True Christian Name Unknown),

Defendants.

Plaintiff's Attorney—J. A. ADAMS.

Defendants' Attorney—J. D. CAMPBELL.

NATURE OF ACTION—Condemnation.

Date of Filing.

Mo.	Day.	Year.	Papers Filed.	Fees.
Jan.	5	1929	Notice of Petition.	
Jan.	5	1929	Affidavit of Publication.	
Jan.	25	1929	Notice and Petition for Bond for Removal	2.00
Jan.	25	1929	Petition for Removal, etc.	
Jan.	25	1929	Bond on Removal.	
Jan.	25	1929	Affidavit of Service.	
Jan.	30	1929	Affidavit of Publication.	
Jan.	30	1929	Order of Removal. [31]	

[Title of Court and Cause—No. 8792.]

CERTIFICATE OF CLERK OF SUPERIOR
COURT TO TRANSCRIPT OF RECORD ON
REMOVAL.

State of Washington,
County of Chelan,—ss.

I, L. T. Armstrong, Clerk of the Chelan County Superior Court, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record and files in the above-entitled cause as I have been directed by the appellants to transmit to the District Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Superior Court this 19 day of February, 1929.

[Seal]

L. T. ARMSTRONG,
Clerk.

By Gladys Simon,
Deputy Clerk. [32]

AFFIDAVIT OF SERVICE.

State of Washington,
County of Spokane,—ss.

J. D. Campbell, attorney for defendant, being first duly sworn, deposes and says: I served the attached notice and special appearance and motion to quash upon plaintiff, Chelan County, Washington, a municipal corporation by depositing true and correct copies thereof in the postoffice at Spokane, Washington, properly wrapped for transmission through the mail, with postage prepaid thereon, addressed to Attorney J. A. Adams, Wenatchee, Washington. That there is regular mail communication between Spokane, Washington, and Wenatchee, Washington.

J. D. CAMPBELL.

Subscribed and sworn to before me this 15th day of March, 1929.

[Seal]

JOSEPH ROSSLow,
Notary Public, Residing at Spokane, Washington.

[33]

In the District Court of the United States, Eastern
District of Washington, Northern Division.

On Removal from Chelan County, Washington.

L.-4502.

CHELAN COUNTY, WASHINGTON, a Municipal
Corporation,

Petitioner,

vs.

ALICE BARBEE WICK, THEODORE S. TET-
TEMER and JANE DOE TETTEMER,
Whose True Name is SALLIE E. TETTE-
MER, His Wife,

Respondents.

NOTICE OF APPEARANCE.

To Chelan County, Washington, a Municipal Corpo-
ration, and to J. A. Adams, Your Attorney:

You will please take notice that defendants are
appearing specially in the above-entitled cause and
if the purpose for which said special appearance is
made shall not be sanctioned or sustained by the
court or by the Appellate Court if an appeal is taken
within due time, said defendants will appear gener-
ally in the cause within the time allowed therefor
by the law, or by the order of court, or by stipula-
tion of parties.

This notice is given you in accordance with Rule 22 of the Rules of Practice of the Federal Court of the Ninth Judicial District.

J. D. CAMPBELL,
Attorney for Respondents,
Appearing Specially.

P. O. Address:

1210 Old National Bank Bldg.,
Spokane, Washington. [34]

[Title of Court and Cause—No. L.-4502.]

SPECIAL APPEARANCE AND MOTION TO QUASH.

Come now the above-named respondents, Alice Barbee Wick, Theodore S. Tettermer and Jane Doe Tettermer, whose true name is Sallie E. Tettermer, his wife, appearing herein specially for the purpose of this motion only, and object to the jurisdiction of this court over the persons of these respondents and each of them, and move the court to vacate and quash and set aside the pretended service of a notice of filing and of hearing of the petition of the above-named petitioner as pretended to be served upon these respondents and each of them, for the following reasons and upon the following grounds, viz:

1. That the said pretended notice was and is irregularly and illegally issued.
2. That the said pretended notice is not such as is prescribed by law.

3. That said pretended notice has not been served or returned as provided by law.

4. That the statutes of the State of Washington on which the above-entitled proceeding was instituted, do not [35] provide for sufficient or adequate service of notice in such cases upon nonresident owners of property affected.

5. That said statutes do not either provide for personal service of such notice upon nonresidents of the State of Washington, nor the mailing of a copy of such notice to nonresidents as a prerequisite to the right of publication.

6. That the aforesaid pretended notice in the above-entitled action does not comply either in form or substance with the statute of the State of Washington governing these proceedings and does not constitute due notice.

7. That the effect of the service of the notice provided by said statutes of the State of Washington in this proceeding against interested parties or property owners not residing within the State of Washington, and especially upon those residing in a distant state, is to permit the property or property rights of such nonresident owners to be confiscated and taken without due process of law.

8. That the act or statute of the State of Washington upon which the above-entitled proceeding is based, and more particularly that part of said act or statute providing for the notice and service thereof by publication upon nonresident owners or interested parties, is contrary to the Constitution of the State of Washington which provides "that

no person shall be deprived of life, liberty or property without due process of law," and is therefore unconstitutional and void.

9. That the effect of the service of the notice provided by said statutes of the State of Washington in this proceeding against interested parties or property owners not residing within the State of Washington, and especially those residing in a distant state of the United States, is to deny to them, as in this case, citizens of such other state, the privileges and immunities of citizens of the State of Washington, and permits [36] the property or property rights of such nonresident owners to be confiscated and taken contrary to Art. IV, Sec. 2, of the Constitution of the United States, which provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," and is therefore unconstitutional and void.

10. That the statute of the State of Washington upon which the above-entitled proceeding is based, and more particularly that part of said act or statute providing for the notice and service thereof by publication upon nonresident owners or interested parties (who in this case are residents and citizens of the State of Pennsylvania), is contrary to the Constitution of the United States—Amendment 14, Sec. 1—which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection

of the laws, and is therefore unconstitutional and void.

11. This motion is based upon all the records and files in the above pretended action.

J. D. CAMPBELL,
Attorney for Respondents, Appearing Specially.
P. O. Address:

1210 Old National Bank Bldg.,
Spokane, Washington.

Service accepted and copy received this — day
of —, 1929.

_____,
Attorney for Petitioner.

Filed Mar. 19, 1929. [37]

[Title of Court and Cause.—No. L-4502.]

ORDER DENYING MOTION TO QUASH.

The respondents' motion to quash having come on for hearing and determination before the court this 15th day of April, 1929, and respondents appearing specially in support of said motion, and Chelan County, Washington, a municipal corporation, petitioner, having appeared by its attorneys, J. A. Adams and Sam Driver, and the Court being fully advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED that the motion to quash made and entered herein be, and the same is hereby denied, to which ruling respondents except, and exception is allowed.

IT IS FURTHER ORDERED that respondents be and they are hereby given and granted fourteen days in which to appear further in said cause.

Done in open court this 15th day of April, 1929.

J. STANLEY WEBSTER,
Judge.

Filed Apr. 15, 1929. [38]

[Title of Court and Cause.—No. L.-4502.]

DEMURRER PRESERVING SPECIAL APPEARANCE.

Come now respondents and still reserving and retaining their special appearance and their right to question the jurisdiction of the court and the constitutionality of the statute or statutes by which they have been brought into court, and demur to the pretended petition on the following grounds and each of them:

1. That the court has no jurisdiction of the person of the defendants or of either of them.

2. That the court has no jurisdiction of the subject matter of the action.

3. That the complaint does not state facts sufficient to constitute a cause of action against these defendants or either of them.

4. That said pretended position does not state facts sufficient to entitle petitioner to the relief asked.

5. That the statutes of the State of Washington relating to condemnation proceedings by corpora-

tions of the character of petitioner under which this proceeding was instituted are unconstitutional and void especially as to nonresidents, being in violation of Article III, Section 2, Article IV, Section 2, Amendment Article V, and Amendment Article XIV, Sec. 1, of the [39] Constitution of the United States and each of them, and are also in violation of other provisions of the Constitution of the United States.

VI.

That the eminent domain statutes of the State of Washington being Secs. 921, 922, 924, 925, 926, 927, 929, 930, 931, 932, 935, 936, of Remington's Code, are in violation of Article I, Secs. 2, 3, 16, and 32, and are in violation of Article II, Sec. 19, of the Constitution of the State of Washington, and each of them, and are also in violation of other provisions of the Constitution of the State of Washington.

VII.

That these proceedings are unconstitutional and void as to these respondents.

J. D. CAMPBELL,
Attorney for Respondents, Alice Barbee Wick,
Theodore S. Tettermer and Sallie E. Tettermer,
His Wife, Appearing Specially.

Filed Apr. 29, 1929. [40]

Filed Apr. 29, 1929.

[Title of Court and Cause.—No. L.—4502.]

MOTION TO MAKE MORE DEFINITE AND
CERTAIN, OR IN THE ALTERNATIVE
FOR BILL OF PARTICULARS.

Come now respondents and still preserving and retaining their special appearance and their right to question the jurisdiction of the court and the constitutionality of the statute or statutes by which they have been brought into court, and move the court to require petitioner to make its petition more definite and certain or in the alternative to require petitioner to furnish bill of particulars by setting forth

I.

As to paragraph 2 in said petition, by stating whether or not the purported resolution referred to in paragraph 2 of said petition appears as a part of the minutes of the proceedings of the County Commissioners of Chelan County, Washington, and if so, to state the book or volume and page where recorded in said Commissioners' minutes, and by stating whether or not, if so recorded, it is recorded in the same volume with the other minutes of said Commissioners for said month of October, 1928.

II.

By making said paragraph 2 more definite and certain by setting out copy of said purported resolution referred to in paragraph 2. [41]

III.

To make paragraph 3 of said petition more defi-

nite and certain by setting out in full the report of the County Engineer, together with map of proposed road, together with field notes and profiles of such survey, all as alleged in said paragraph 3 of said petition.

IV.

To make paragraph 3 of said petition more definite and certain by setting out the order or other record by which the said County Commissioner set the matter of the alleged laying out and establishing of said road for hearing on November 23, 1928, at the office of the Board of County Commissioners in the Court House at Wenatchee, Washington, together with a copy of said alleged notice and a copy of the proof of posting thereof, all as alleged in paragraph 3.

V.

To make paragraph 4 more definite and certain by setting out copy of said alleged order finding said road to be a public necessity and establishing said road and directing the prosecuting attorney of Chelan County, Washington, to proceed under the power of eminent domain to acquire said lands and other property rights, all as alleged in said paragraph 4.

VI.

To make paragraph 5 of said petition more definite and certain by setting out what portion of said property is owned by respondent, Alice Barbee Wick, and how many acres it consists of, and by setting out what portion belongs to respondents Theodore S. Tettermer and wife, and how many acres their said property consists of.

VII.

To make said petition more definite and certain by setting out in full the proceedings before the County Commissioners of Chelan County, [42] Washington, including copies of all records, minutes, resolutions, notices, proof of posting or service thereof leading up to the alleged laying out and establishment of said alleged road, and the authority conferred upon the Prosecuting Attorney of Chelan County, Washington, to bring said proceedings in eminent domain.

VIII.

To make said petition more definite and certain by setting out whether petitioner seeks to acquire full title to said real estate whereon said road is to be established, or whether petitioner seeks simply an easement for the purpose of constructing a highway over the same.

And in the event that the foregoing motions to make more definite and certain or for bill of particulars are denied as to setting out or furnishing copies called for, then respondents move the court to require petitioner to submit copies of all records of the proceedings of the County Commissioners of Chelan County including copies of minutes, records, resolutions, notices, proof of posting or service thereof, pertaining to the establishment of said road and the bringing of this proceeding.

J. D. CAMPBELL,
Attorney for Respondents, Appearing Specially.

State of Washington,
County of Spokane,—ss.

J. D. Campbell, being first duly sworn, deposes and says: I am the attorney for respondents in the above-entitled action. I have read the foregoing motion for bill of particulars, and the same is not made for the purpose of delay, but the information called for therein is necessary to respondents in order that they may safely plead to petitioner's petition. That the respondents and each of them are without the State of Washington, and for that reason this verification is made by affiant.

J. D. CAMPBELL.

Subscribed and sworn to before me this 29th day of April, 1929.

[Seal]

JOSEPH ROSSLOW,

Notary Public, Residing at Spokane, Washington.

[44]

[Title of Court and Cause—No. L.-4502.]

ORDER DENYING MOTION TO MAKE MORE
DEFINITE AND CERTAIN AND FOR
BILL OF PARTICULARS, AND ORDER
OVERRULING DEMURRER.

Respondents' motion to make more definite and certain or in the alternative for bill of particulars and respondents' demurrer to petition having come on for determination before the court this 21st day of October, 1929, petitioner having appeared by its

attorneys, J. A. Adams and Sam Driver, and respondents having appeared specially by their attorney J. D. Campbell, and the court being fully advised in the premises,—

IT IS ORDERED, ADJUDGED AND DECREED that said motion to make more definite and certain or in the alternative for bill of particulars be, and the same is hereby denied.

IT IS FURTHER ORDERED that respondents' demurrer to petition herein be and the same is hereby overruled, to which rulings respondents except, and exception allowed.

Done in open court this 21st day of October, 1929.

J. STANLEY WEBSTER,

District Judge.

Filed Oct. 21, 1929. [45]

[Title of Court and Cause—No. L.-4502.]

MOTION FOR SETTING CASE FOR TRIAL.

Comes now petitioner above named and respectfully moves the Court that the above-entitled cause be set down for trial.

This motion is based upon the records and files herein, and the subjoined affidavit.

J. A. ADAMS,

Prosecuting Attorney for Chelan County, Washington, Attorney for Petitioner.

State of Washington,
County of Chelan,—ss.

Sam M. Driver, being first duly sworn on oath,

deposes and says: That he is the duly appointed, qualified and acting deputy Prosecuting Attorney for Chelan County, Washington, and as such is one of the attorneys for the petitioner in the above-styled cause.

That said action was instituted in the Superior Court of the State of Washington in and for Chelan County, by filing of petition and notice on the 5th day of January, 1929, for the purpose of acquiring by condemnation the real property of the respondents particularly described in said petition, for public highway purposes. That thereafter and on January 30, 1929, the said Superior Court made and entered its order removing said cause to the United States District Court, Eastern District of [46] Washington, Northern Division. That respondents thereupon appeared specially by their attorney J. D. Campbell of Spokane, Washington, and moved to quash service of notice in the above-styled action, which motion was denied by order of the above-entitled court made and entered on April 15, 1929. That respondents thereafter moved to require petitioner to make its petition more definite and certain and interposed a demurrer to said petition, which motion and demurrer were duly overruled by the above-entitled court by order made and entered on October 21, 1929.

That no further proceedings whatsoever have been had or taken in the above-styled cause, and that thereafter and prior to February 10, 1930, the exact date being to this affiant unknown, J. D. Campbell, attorney of record for the respondents

in the above-entitled action, died, and that since his death no other attorney has appeared of record in the action for the respondents or either of them. That the attorneys for the petitioner first learned of the death of said J. D. Campbell on February 10, 1930, and thereafter, on February 13, 1930, affiant notified the respondents and each of them, by letter directed to the following address: "Care of Joseph B. Thomas, Suite 27 Transportation Building, 26 South 15th Street, Philadelphia, Pennsylvania," of the death of said J. D. Campbell. That respondents and each of them are residents of Philadelphia in the State of Pennsylvania according to affiant's information and belief, and that when the Board of County Commissioners for Chelan County, Washington, was considering the establishment of the highway involved in this action, one Adrian W. Vollmer, attorney at law, residing at Lakeside, Chelan County, Washington, wrote to the said Board of County Commissioners and to the Prosecuting Attorney for Chelan County, Washington, purporting to represent [47] the respondents as their attorney, and advised said Prosecuting Attorney by letter as follows: "Please note that the mail address of Miss Alice Barbee Wick and of Miss Margaret Rosborough is now care of Mr. Joseph B. Thomas, Suite 27, Transportation Building, 26 South 15th Street, Philadelphia, Pennsylvania." In this letter, which is dated July 6, 1928, the said Adrian W. Vollmer also requested that copies of notices and communications be sent to the parties at the above address.

That affiant sent a copy of said letter, in which he advised respondents of the death of J. D. Campbell, and requested them to employ another attorney to represent them in the case, to said Adrian W. Vollmer, directed to Lakeside Post Office, Chelan County, Washington; that each of said letters was mailed in an envelope upon which appeared the return address of the Prosecuting Attorney for Chelan County, Washington, and no copy of said letter was ever returned to him.

SAM M. DRIVER.

Subscribed and sworn to before me this 30th day of April, 1930.

[Seal]

J. A. ADAMS,

Notary Public in and for the State of Washington,
Residing at Wenatchee. [48]

AFFIDAVIT OF MAILING MOTION FOR SETTING CASE FOR TRIAL.

State of Washington,
County of Chelan,—ss.

I, Faye Hamilton, being first duly sworn on oath, depose and state:

That I am and was at all times herein mentioned a citizen of the United States and a resident of the State of Washington, over the age of twenty-one years, competent to be a witness in the within entitled action, and not a party to it.

That I served the attached motion upon Miss Alice Barbee Wick and Theodore S. Tettermer and Jane Doe Tettermer, his wife (true Christian name unknown), and upon Mr. Adrian W. Vollmer,

by mailing by registered mail a true and correct copy of the said attached motion to the said Miss Alice Barbee Wick and Theodore S. Tetterer and wife, and Mr. Adrian W. Vollmer, the said copies being deposited in envelopes addressed: "Miss Alice Barbee Wick and Mr. Theodore S. Tetterer and Mrs. Theodore S. Tetterer, Care of Mr. Joseph B. Thomas, Suite 27, Transportation Building, 26 South 15th Street, Philadelphia, Pa. Register RRR"; and "Mr. Ardian W. Vollmer, Attorney, Lakeside Post Office (Chelan County) Washington, Please Forward if Necessary. Register RRR"; and with the postage thereon fully prepaid, same being deposited in the postoffice at Wenatchee, Washington, on the 2d day of May, 1930.

FAYE HAMILTON.

Subscribed and sworn to before me this 7th day of May, 1930.

[Seal]

L. J. GEMMILL,

Notary Public in and for the State of Washington,
Residing at Wenatchee.

Filed May 8, 1930. [49]

PROOFS OF MAILING NOTICES OF HEAR-
ING AND TRIAL.

Post Office Department.

Official Business.

Registered Article.

No. S-2014.

Insured Parcel.

No. 52130.

60773.

Penalty for Private Use to Avoid Payment of Post-
age \$300.

Postmark of Delivering
Office

And Date of Delivery.

Address Your Mail

to

Street and Number

Philadelphia Pa 8

May 13

6-PM

1930

Return to J. A. ADAMS, Prosecuting Attorney.

(Name of Sender.)

Street and Number)

or Post Office Box.) 31 Commercial Bank Bldg.

Post Office at—Wenatchee,

State—Washington.

Rev. 3-24.

c5-6116.

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

MISS ALICE BARBEE WICK.

(Signature or name of addressee.)

By JOSEPH B. THOMAS, Atty.

(Signature of addressee's agent.)

Date of delivery—May 13, 1930.

Form 3811. Government Printing Office. C5-6116.

Filed May 26, 1930.

L.-4502. [50]

[Title of Court and Cause—No. L.-4502.]

NOTICE OF HEARING FOR ORDER OF
NECESSITY.

To Alice Barbee Wick, Theodore S. Tettermer and Jane Doe Tettermer, His Wife (True Christian Name Unknown) Defendants, (c/o Joseph B. Thomas, Suite 27 Transportation Bldg., 26 S. 15th St., Philadelphia, Pa.), and to Adrian W. Vollmer, Esq., Attorney for Said Parties (Lakeside, Wn.).

TAKE NOTICE that the above-entitled case has been set for hearing in said court at Spokane, Wn., on June 5, 1930, at 10 A. M., for order of necessity.

(Signed) EVA M. HARDIN,
Clerk.

(Notices mailed by ordinary mail on May 26, 1930.)

E. L. C. [51]

[Title of Court and Cause—No. L.-4502.]

NOTICE RE FIXING DATE OF TRIAL.

To J. A. Adams, Prosecuting Attorney for Chelan County, Washington; to Alice Barbee Wick, Theodore S. Tettemer and Jane Doe Tette-mer, His Wife (True Christian Name Un- known), (c/o Joseph B. Thomas, Suite 27, Transportation Bldg., 26 S. 15th St., Phila- delphia, Pa.), and to Adrian W. Vollmer, Esq., Attorney for Said Parties (Lakeside, Wash.).

TAKE NOTICE that the above-entitled case has been set for trial in said court, at Federal Bldg., Spokane, on Thursday, Nov. 20, 1930, at 10 A. M.

EVA M. HARDIN,
Clerk U. S. District Court.

(Notices mailed as above indicated by ordinary mail 10-28-30.)

E. L. C. [52]

[Title of Court and Cause—No. L.-4502.]

AFFIDAVIT OF ADRIEN WINSTON VOLL-
MER.

State of Pennsylvania,
City and County of Philadelphia,—ss.

Adrien Winston Vollmer, being first duly sworn on oath, deposes and says: That he is not and has never been and never pretended to be counsel for any or all of said parties in said cause, nor has he ever appeared in said cause. That he does not reside in the State of Washington and has not even visited or been in said State for over twenty-three months.

ADRIEN WINSTON VOLLMER.

Sworn and subscribed to before me this 7 day of November, 1930.

LINDEN T. HARRIS,
Notary Public.

Commission expires April 1, 1931.

[Seal] LINDEN T. HARRIS,
Notary Public in and for the State of Pennsylv-
vania, Residing at Philada. [53]

[Title of Court and Cause—No. L.-4502.]

AFFIDAVIT OF MAILING.

State of Washington,
County of Spokane,—ss.

I, Alma Pendell, being first duly sworn on oath, do depose and say:

That I am and was at all time herein mentioned a citizen of the United States, and a resident of the State of Washington, over the age of twenty-one years, competent to be a witness in the within entitled action, and not a party to it.

That I served the attached affidavit of Adrien Winston Vollmer upon J. A. Adams, Prosecuting Attorney for Chelan County, by registered mail; a true and correct copy of the said attached affidavit being deposited in envelope addressed to Mr. J. A. Adams, Prosecuting Attorney for Chelan County, Wenatchee, Washington, and with the postage thereon fully prepaid, same being deposited in the postoffice at Spokane, Washington, on the seventeenth day of November, 1930. Attached hereto is the receipt, numbered 12882, issued by the postoffice to me for the said registered mail.

ALMA PENDELL.

Subscribed and sworn to before me this 17th day of November, 1930.

[Seal] FLORENCE E. WHITE,
Notary Public in and for the State of Washington,
Residing at Spokane. [54]

Receipt for Registered Article No. 12882.

Registered at the Post Office indicated in Postmark.

Fee paid 15 cents Class postage —.

Return Receipt fee 3 Spl. Del'y fee —.

Delivery restricted to addressee: In person —
or order —.

Accepting employee will place his initials in space indicating restricted delivery.

POSTMASTER, per A. (MAILING OFFICE)
(Postmark of)
Spokane, Wash.
Reg. Div.
Nov.
17,
1930.

The sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

REGISTRY FEES AND INDEMNITY.—Domestic registry fees range from 15 cents for indemnity not exceeding \$50 up to \$1.00 for indemnity not exceeding \$1,000. The fee on domestic registered matter without intrinsic value and for which indemnity is not paid is 15 cents. Consult postmaster as to the specific domestic registry fees and as to the registry fees chargeable on registered parcel-post packages for foreign countries. Fees on domestic registered C. O. D. mail range from 25 cents to \$1.20. Indemnity claims must be filed within one year (C. O. D. six months) from date of mailing.

Form 3806 (Rev. 7-1-29).

C5-6852.

U. S. Government Printing Office: 1929.

Filed Nov. 18, 1930. [55]

TRANSCRIPT OF COMMISSIONERS' PROCEEDINGS.

PLAINTIFF'S EXHIBIT No. 1.

L.-4501. L.-4502. Plaintiff's Exhibit No. 1.
Adm. E. M. H.

RESOLUTION.

The Board of County Commissioners of Chelan County, Washington, at a regular meeting of the board held on the 30th day of October, 1928, by unanimous vote of such board adopted the following Resolution:

“BE IT RESOLVED, that the Board of County Commissioners of Chelan County, Washington, hereby declare their intention to lay out and establish a county road along the southerly shore of Lake Chelan in said county, to be known as the Change in South Lake Shore Estension Road, beginning at an interior point in Lot 3 of Section 3, Township 27 N. R. 21, E. W. M. at survey station 420+96.5 of South Lake Shore Road as now established and of record, and running thence in a general northwesterly direction by a most feasible route and ending at survey station 488+00.9 (an intersection with Twenty-five Mile Creek Road) being an interior point in the SW.1/4 NE.1/4 Section 4, Township 27 N. R. 21, E. W. M., the whole distance being about 1.3 miles; and said Board do hereby declare that said road is considered a public necessity.

And the county engineer of said county is hereby directed to make an examination of such proposed road and if necessary a survey thereof and report upon such project in writing to the Board.

THE BOARD OF COUNTY COMMISSIONERS OF CHELAN COUNTY,
WASHINGTON.

J. H. MILLER.

J. A. MILSON.

W. J. TAYLOR.

Attest: A. V. SHEPHARD,

Clerk. [56]

State of Washington,
County of Chelan,—ss.

In the Matter of the Resolution of Board of County Commissioners et al. for a County Road to be known as the South Lake Shore Extension Road.

FIELD NOTES.

Said road commences at survey station 420+96.5 of South Lake Shore Road being an interior point in Government Lot 3 of Section 3, T. 27 N., and run thence as follows, from a course bearing N. 63° 52' W.

Sta.	Course	Distance feet.	Feet Curves.	Remarks.
420+96.5	N. 63° 52' W. P. C.		D 20° L	
421+88.0	P. I.		Δ 35° 26'	
422+73.7	P. T.		T 91.5	
422.+77.2	S. 80° 42' W. P. C.	3.5	L 177.2	
423+59.8	P. I.		D 21° R	
424+37.6	P. T.		Δ 33° 41'	
426+52.7	N. 65° 37' W. P. C.	215.1	T 82.6	
427+13.7	P. I.		L 160.4	
			Δ 7° 19'	
			D 6° R	

Sta.	Course	Distance feet.	Feet Curves.	Remarks.
427+74.6	P. T. N. 58° 18' W.	656.2	T 61.0 L 121.9	
434+30.8	P. C.			
439+17.8	P. I.		D 4° L Δ 37° 33'	
443+69.6	P. T. S. 84° 09' W.	326.6	T 487.0 L 938.8	
446+96.2	P. C. [57]			
448+52.0	P. I.		D 6° R Δ 47° 01'	
449+90.1	P. T. N 48° 50' W.	290.3	T 155.8 L 293.9	
452+80.4	P. C.			

Sta.	Course	Distance feet.	Feet Curves.	Remarks.
455+19.8	P. I.		D 8° L	D
457+42.5	P. T.		Δ 36° 58'	I
			T 239.4	A
			L 462.1	G
458+04.0	N 85° 48' W. P. C.	61.5		R
459+51.2	P. I.		D 12° R	A
			Δ 34° 16'	M
			T 147.2	S
460+89.5	P. T.		L 285.5	O
461+64.6	N 51° 32' W. P. C.	75.1		M
463+08.7	P. I.		D 12° L	I
			Δ 33° 35'	T
			T 144.1	E
464+44.5	P. T.		L 279.9	D.

Sta.	Course	Distance feet.	Feet Curves.	Remarks.
466+00.6	N 85° 07' W. P. C.	156.1		
467+56.6	P. I.		D 10° R Δ 30° 27'	
469+05.1	P. T.		T 156.0 L 304.5	
473+47.8	N 54° 40' W. P. C.	442.7		
475+11.8	P. I.		D 6° R Δ 19° 29'	
476+72.5	P. T.		T 164.0 L 324.7	
477+79.1	N 35° 11' W. P. C.	106.6		
479+83.2	P. I.		D 2° L Δ 8° 09'	

Sta.	Course	Distance feet.	feet Curves.	Remarks
481+86.6	P. T.		T 204.1	
	N 43° 20' W.	231.9	L 407.5	
484+18.5	P. C.			
			D 6° R	
485+44.6	P. I.		△ 15° 03'	
			T 126.1	
486+69.3	P. T.		L 250.8	
	N 28° 17' W.	131.6		
488+00.9				Point in present traveled road end of new location. [58]

I hereby certify that the field notes and maps herewith submitted are correctly prepared, and that the survey was made on April 27, and 28, May 12, 21, 22, June 22 and July 3, 1928.

Dated this 30th day of October, 1928.

JOHN DUFF,
County Engineer. [59]

State of Washington,
County of, —ss.

In the Matter of the Petition of et al. for a County Road to be known as the .
. Road.

FIELD NOTES.

Said road commences at

LEVEL NOTES as FOLLOWS:

Sta.	+Rod.	H. 1.	-Rod.	Elev.	Remarks.
420+96.5	6.32	1177.45	13.2	1164.3	1171.13 on G. N. "P." Line Hub.
P. C.					
421+00			13.1	64.4	
+50			9.8	67.6	
422+00			7.2	70.2	
+50			4.3	73.1	
+73			10.71	66.74	
423+00			14.8	62.6	
T. P.	2.67	1170.00	10.12	1167.33	

Remarks.

Sta.	+Rod.	H. 1.	-Rod.	Elev.
+50			14.7	55.3
424+00			7.4	62.6
+50			5.4	64.6
425+00			4.5	65.5
+50			2.6	67.4

[60]

Sta.	+Rod.	H. I.	-Rod.	Elev.	Remarks.
425+70		1170.00	.09	69.1	
T. P.	4.75	1173.53	1.22	1168.78	
426+00			5.7	67.8	
+50			8.1	65.4	
427+00			7.5	66.0	
+50			6.2	67.3	
428+00			5.2	68.3	
+50			4.8	68.7	
429+00			3.2	70.3	
B. M.			6.04	1167.49	1167.49 on 36" pine tree 5 ft. right Sta. 428+65.
T. P.	2.26	1175.35	0.44	1173.09	
+50			2.2	73.1	
430+00			2.7	72.6	
+50			3.6	71.7	
431+00			5.8	69.5	
+50			5.7	69.6	

Sta.	+Rod.	H. I.	-Rod.	Elev.	Remarks.
432+00			4.5	70.8	
+50			5.0	70.3	
433+00			7.4	68.0	
+23			12.7	62.6	
+50			10.5	64.8	
434+00			5.3	70.0	
+50			3.3	72.0	
T. P.	1.37	1174.24	2.48	1172.87	
435+00			3.6	70.6	
+50			6.0	68.2	
436+00			9.2	65.0	
+50			11.3	62.9	
T. P.	6.91	1170.72	10.43	1163.81	
+92.5			10.72	1160.00	on hub
437+00			11.4	59.3	

[61]

Station.	+Rod.	H. 1.	-Rod.	Elev.	REMARKS.
437+50		1170.72	14.8	1155.9	
438+00			11.6	59.1	
+50			8.1	62.6	
439+00			4.0	66.7	
+50			2.8	67.9	
B. M.			8.73	1161.99	1161.99 spike in 18" pine tree 40 Ft. right of Sta. 439+75.
440+00			4.4	66.3	
+20			5.8	64.9	
+50			11.2	59.5	
+70			4.6	66.1	
441+00			1.2	69.5	
T. P.	1.13	1170.97	0.88	1169.84	
+50			3.1	67.9	
442+00			5.5	65.5	
+50			8.9	62.1	fence line.
443+00			9.5	61.5	

Station.	+Rod.	H. 1.	-Rod.	Elev.	REMARKS.
+50			7.7	63.3	
444+00			4.1	66.9	
B. M.			8.44	1162.53	on 24" pine tree 25 Ft. Rt. Sta. 444+40= G. N. B. M. Elev. 1162.59.
T. P.	4.10	1172.08	2.99	1167.98	
+50			2.4	69.7	
445+00			2.7	69.4	
+50			4.4	67.7	
446+00			6.7	65.4	
+50			7.8	64.3	
447+00			8.5	63.6	
+50			7.6	64.5	
448+00			6.8	65.3	
T. P.	5.44	1171.70	5.82	1166.26	
+50			6.2	65.5	

REMARKS.

Station.	+Rod.	H. 1.	-Rod.	Elev.	REMARKS.
449+00			6.4	65.3	
+50			5.2	66.5	
450+00			6.0	65.7	
[63]					
450+50		1171.70	6.7	1165.0	
451+00			6.8	64.9	
+50			6.3	65.4	
T. P.	4.29	1170.62	5.37	1166.33	
452+00			4.1	66.5	
+50			4.8	65.8	
453+00			5.5	65.1	
+50			6.7	63.9	
454+00			7.8	62.8	
+50			8.3	62.3	
T. P.	6.54	1167.60	9.56	1161.06	

Station	+Rod.	H. 1.	—Rod.	Elev.	REMARKS.
455+00			4.6	63.0	
+50			3.5	64.1	
456+00			4.0	63.6	
+50			4.2	63.4	
457+00			4.2	63.4	
T. P.	2.97	1168.33	2.24	1165.36	
+50			3.1	65.2	

I hereby certify that the field notes and maps herewith submitted are correctly prepared, and that the survey was made on

Dated this 30 day of October, 1928.

JOHN DUFF,
County Engineer. [64]

State of Washington,
County of,—ss.

In the Matter of the Petition of et al. for
a County Road to be Known as the
Road.

FIELD NOTES.

Said road commences at

Sta.	+Rod. Distance, Distance		Elev.	Leavel Notes Continued:	REMARKS.
	Feet	Feet			
	H. 1.	—Rod.			
458+00	1168.33	4.56	1163.7		
+50		5.6	62.7		
459+00		6.6	61.7		
B. M.		0.15	1168.18	On School Marm Stump 25' Lt. Sta.	
				459 10= G. N. B. M. Elev. 1168.24.	
+50		7.2	61.1		
460+00		6.6	61.7		
+50		7.2	61.1		
461+00		7.0	61.3		
+50		6.2	62.1	On hub 461+60.7.	
T. P.	5.65	1168.15	5.83	1162.50	
642+00		5.6	62.6		
+50		5.0	63.2		
463+00		4.9	63.3		
+50		4.7	63.4		

Station.	+Rod.	H. 1.	-Rod.	Elev.	REMARKS.
464+00		1168.15	6.0	62.2	
+50			6.9	61.3	
465+00			6.5	61.7	
+50			6.0	62.2	
T. P.	5.76	1168.56	5.35	1162.80	
466+00			5.8	62.8	
+50			5.1	63.5	
467+00			5.7	62.9	
+50			6.4	62.2	
468+00			6.1	62.5	
+50			6.5	62.1	
469+00			6.3	62.3	
+50			5.2	63.4	
470+00			4.8	63.8	
+50			3.8	64.8	
471+00			2.7	65.9	
+50			1.8	66.8	

REMARKS.

Station.	+Rod.	H. 1.	-Rod.	Elev.
T. P.	11.24	1178.80	1.00	1167.56
+55			14.0	64.8
+72			14.4	64.4
+80			10.2	68.6
472+00			9.6	69.2
+50			9.0	69.8
473+00			9.8	69.0
+50			11.4	67.4
474+00			9.7	69.1
+50			7.8	71.0
475+00			7.0	71.8
[66]				
+50			5.8	73.0
476+00			4.9	73.9
+50			4.2	74.6
+72.5			5.2	73.6
[67]				

Sta.	+Rod.	H. 1.	-Rod.	Elev.	REMARKS
447+00		1178.80	3.9	74.9	
T. P.	6.80	1182.83	2.77	1176.03	
+50			8.7	74.1	
478+00			5.4	77.4	
B. M.			5.87	1176.96	Spike in 12" pine tree 5 Ft. Rt. Sta. 477 +80== G. N. B. M. Elev. 1176.96
T. P.	5.32	1187.95	0.20	1182.63	
+44			5.3	82.7	
+58			6.4	81.6	
+60			3.0	85.0	
479+00			2.3	85.7	
+50			7.8	80.2	
T. P.	10.59	1187.10	11.44	1176.51	
480+00			10.1	77.0	
+50			7.6	79.5	
481+00			3.8	83.3	
+50			2.2	84.9	Irrigation Ditch

Sta.	+Rod.	H. I.	-Rod.	Elev.	REMARKS.
T. P.	12.85	1199.89	0.06	1187.04	
482+00			14.6	85.3	
+50			11.4	88.5	
483+00			6.8	93.1	Irrigation Ditch
+50			3.5	96.4	
B. M.			3.24	1196.65	On 12" poplar tree 40 Ft. Lt. Sta. 483+10
+58.1			3.37	96.5	Hub.
T. P.	7.18	1195.78	11.29	1188.60	
+90			13.0	82.8	
484+00			14.0	81.8	
+27			15.7	80.1)	Creek
+40			14.8	81.0)	
+42			12.9	82.9	
+50			11.2	84.6	
+92			9.2	86.6	

Sta.	+Rod.	H. 1.	-Rod.	Elev.	REMARKS.
485+00			6.3	89.5	
+50			1.9	93.9	
[69]					
		1195.78			
T. P.	9.58	1204.82	0.54	1195.24	
486+00			6.8	98.0	
+50			7.6	97.2	
487+00			4.3	1200.4	
+35			1.8	1202.9	
T. P.	9.02	1213.20	0.64	1204.18	
+50			6.7	1206.5	
+70			3.6	1209.6	
488+00.9			3.9	1209.3	End of Proposed Improvement
B. M.			4.58	1208.62	On 20" pine tree 50 Ft. Lt. Sta. 487 50=G.
					N. B. M. Elev. 1208.67

I hereby certify that the field notes and maps herewith submitted are correctly prepared, and that the survey was made on April 27 & 28, May 12-21 & 22 June 22 and July 3rd, 1928.

Dated this 30th day of October 1928.

JOHN DUFF,
County Engineer. [70]

State of Washington,
County of Chelan,—ss.

In the Matter of the Resolution of the Board of
County Commissioners for a County Road to
be Known as the South Lake Shore Extension
Road.

ENGINEER'S REPORT.

To the Honorable Board of County Commissioners
of Said County:

Gentlemen:

I, John Duff, County Engineer of said County, having, on the 30th day of October, 1928, been duly ordered by your Honorable Board to make an examination and if necessary, a survey of the above proposed road and report thereon, did, on the 30th day of October, 1928, and the ——— days of 19——, in obedience to said order and the statutes in such cases made and provided, proceed to and did make said examination and survey and herewith submit the following as my report thereon:

FIRST.

In my opinion said road is a necessity and should be established and opened, for the reason that there

is no other road which is of equal utility for the citizens residing in the vicinity of said proposed road.

SECOND.

The terminal points, general course and length of said proposed road, as examined and surveyed, are as follows:

Commencing at survey station 420+96.5 of South Lake Shore Road, as of record, the same being an interior point in Govt. Lot 3, of Sec. 3, Twp. 27 N. Rg. 21 E.W.M. runs thence in a general northwest [71] direction, across Govt. Lots 3, 2 and 1 and the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 3, Twp. 27 N. Rg. 21 E.W.M. and Govt. Lots 6 & 5 of Sec. 4, Twp. 27 N. Rg. 21 E.W.M. and the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 4 Twp. 27 N. Rg. 21 E.W.M. and ends at survey sta. 488+00.9 being an interior point in the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 4, Twp. 27 N. Rg. 21 E.W.M. the total length being 1 mile 146 rods and 15.4 feet.

THIRD.

I recommend that said road be established sixty (60) feet in width, except as hereinafter stated, to-wit.

FOURTH.

The names of persons interested in lands over which said proposed road will pass, who consent to the establishment of the same, and waive all claims for damages caused thereby, are shown below:

FIFTH.

The names of all persons interested in lands over which said proposed road will pass, who refuse their consent to the establishment of same, together with

the amount of damages claimed by each, are shown below:

SIXTH.

An estimate of damages to each tract of land of nonconsenting persons interested in such tract of land over which said proposed road will pass, is shown below:

SEVENTH.

A description of each tract of land over which said proposed road will pass, with the name and place of residence or address of the owners, lessees, claimants or incumbrancers thereof, if known and the quantity of land to be taken from each of said tracts, is shown below: [72]

Names and Address or Residence of Owner or Lessee or Incumbrancer (State if Unknown)	Subdivision	Description of Land		Rge.	Quantity to be taken Acres	Estimated Damages \$	Estimated Benefits \$	Damages Claimed \$	or Don't Con- sent	Remarks State if Damages Claimed Waived
		Sec.	Twp.							
Margaret Rosborough, Philadelphia, Penn.	Lot 3	3	27	21	1	78				
"	" 2	3	27	21	1	87				
"	" 1	3	27	21	2	02				
"	" 6	4	27	21	1	85				
Alice Barbee Wick Philadelphia, Penn.	SW. 1/4 of SW. 1/4	3	27	21	02					
"	Lot 5	4	27	21	49					
Kathryn Watson	SW. 1/4 of NE. 1/4	4	27	21						Right of way secured.

EIGHTH.

The probable cost of construction of said road will be as follows:

Items	Amount
Bridges and Culverts	600.00
Clearing and Grubbing	400.00
Grading	14,500.00
Damages	
Cost Bill of Survey (estimated)	150.00
	<hr/>
Total estimated cost of said road	15,650.00

NINTH.

Such other facts, matters and things as I deem important to be known by your Honorable Board, are as follows:

The character of right of way is as follows: [73]
 1500 ft. of steep side hill with some small timber,
 2170 ft. of raw land with grease wood & scrub pine,
 slope not so steep, 305 ft. of light slope, scattered
 scrub pine & grease wood, 225 ft. raw land cleared,
 750 ft. cleared & cultivated, 500 ft. part orchard
 rest uncultivated, 100 ft. cleared raw land, 350 ft.
 second growth pine, balance to end of road same as
 last with xing for creek, land rocky.

I also file with this report the written consent and waivers of claims to damages, together with claims for damages, by persons interested in the lands affected by the establishment of said proposed road; a map of said proposed road as the same is laid out and surveyed, with the name of the

owner of each tract of land written thereon, and a transcript of the field notes of the survey thereof.

Respectfully submitted this 30th day of October, 1928.

JOHN DUFF,
County Engineer.

By _____,
Deputy. [74]

NOTICE OF HEARING ON CHANGE IN
SOUTH LAKE SHORE EXTENSION
ROAD.

NOTICE IS HEREBY GIVEN, That a hearing will be held before the Board of County Commissioners of Chelan County, Washington on November 23rd, 1928, at the hour of 10:30 A. M.

Said hearing will be held at the Commissioners Office in the Court House in Wenatchee, Washington to determine whether a proposed County road shall be established, being a change in the South Lake Shore Road along the Southerly side of Lake Chelan, the width of said road shall be 60 feet and the termini and route thereof as recommended in the County Engineer's report is as follows:

Commencing at survey sta. 420+96.5 of So. Lake Shore Road, as of record being an interior point in Lot 3 of Sec. 3 Twp. 27 N. Rg. 21 E. E. W. M., running thence, from a course N. 63° 52' W. on a 20° curve to left thru an angle of 35° 26' 177.2 ft. thence S. 80° 42' W., 3.5 ft. thence on a 21° curve to right thru an angle of 33° 41', 160.4 ft.; thence N.

65° 37' W., 215.1 ft.; thence on 6° curve to right, thru an angle of 7° 19', 121.9 ft.; thence N. 58° 18' W. 656.2 ft.; thence on 4° curve to left thru an angle of 37° 33', 938.8 ft.; thence S. 84° 09' W., 326.6 ft.; thence on a 16° 00' curve to the right thru an angle of 47° 01', 293.9 ft. thence N. 48° 50' W., 290.3 ft., thence on an 8° 00' curve to left thru angle of 36° 58', 462.1 ft., thence N. 85° 48' W., 61.5 ft. thence on a 12° 00' curve to right thru an angle of 34° 16', 285.5 ft.; thence N. 51° 32' W., 75.1 ft.; thence on a 12° 00' curve to left, thru an angle of 33° 35', 279.9 ft.; thence N. 85° 07' W., 156.1 ft.; thence on a 10° 00' curve to right thru an angle of 30° 27', 304.5 ft.; thence N. 54° 40' W., 442.7 ft.; thence on a 6° 00' curve to right thru an angle of 19° 29'—324.7 ft.; thence N. 35° 11' W., 106.6 ft.; thence on a 2° 00' curve to left thru an angle of 8° 09',—407.5 ft.; thence N. 43° 20' W., 231.9 ft.; thence on a 6° 00' curve to right thru an angle of 15° 03', 250.8 ft.; thence N. 28° 17' W. 131.6 ft. and ending at survey sta. 488+00.9 (an intersection with Twenty-five Mile Creek Road) being an [75] interior point in S.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$ of Sec. 4 Twp. 27 N. Rg. 21 E. W. M. the whole distance being about 1.3 miles, said road to be known as the So. Lake Shore Extension Road, all in Chelan County, Washington.

At said hearing any interested persons may appear and be heard for or against the establishment of the proposed change, in the South Lake Shore Road.

Dated at Wenatchee, Washington, this 31st day of October, 1928.

A. V. SHEPARD,
Clerk of th
Clerk of the Board. [76]

State of Washington,
County of Chelan,—ss.

In the Matter of the Resolution of County Commissioners et al. for a County Road to be known as So. Lake Shore Extension Road.

AFFIDAVIT OF POSTING NOTICES.

John H. Larner, being first duly sworn on oath, deposes and *say* that on the 1st day of November, 1928, he posted due and legal notices of the hearing upon the report of the Engineer in the matter of the County Road above mentioned, as follows:

One notice on 4" pine tree 10 ft. to right of sta. 422+25.

One notice on 5" pine tree 5 ft. to left of Sta. 449+10.

One notice on 4" pine tree 5 ft. to left of Sta. 487+55.

JOHN H. LARNER.

Subscribed and sworn to before me this 2d day of November, 1928.

[Seal]

JOHN GODFREY.

[Chelan County
Auditor's

Seal

State of Washington] [77]

In the Superior Court of the State of Washington,
in and for the County of Chelan.

In the Matter of the Change in South Lake Shore
Extension Road, Chelan County.

AFFIDAVIT OF PUBLICATION.

State of Washington,
County of Chelan,—ss.

D. R. Stohl, being first duly sworn, on oath, depose and say: That I am the principal clerk of the World Publishing Company, a corporation organized and existing under the laws of the State of Washington, the owner and publisher of "The Wenatchee Daily-World" a legal daily newspaper printed and published at the office of the owner and publisher thereof in the city of Wenatchee, County of Chelan, and State of Washington, since prior to the year 1910. That I make this affidavit for and on behalf of said corporation; that said newspaper is a newspaper of general circulation in said county and state, and has at all times been and now is printed and published in the English language, and that the Notice of Hearing in the Matter of the Change in South Lake Shore Extension Road, Chelan County, No. —, a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form in the regular and entire edition of said paper once each week for a period of 4 consecutive weeks, beginning on the 1 day of November, 1928, and ending on the 22 day of November, 1928, both dates in-

clusive, and that said newspaper was regularly distributed to its subscribers during all of said period.

That the full amount of the fee charged for the foregoing publication is the sum of \$7.75 which amount has been paid in full.

D. R. STOHL. [78]

Subscribed and sworn to before me this 22 day of November, 1928.

A. V. SHEPHARD,

Deputy Auditor in and for the State of Washington, Residing at Wenatchee, Chelan County.

[Chelan County

Auditor's

Seal

State of Washington] [79]

NOTICE OF HEARING ON CHANGE IN
SOUTH LAKE SHORE EXTENSION
ROAD.

NOTICE IS HEREBY GIVEN, That a hearing will be held before the Board of County Commissioners of Chelan County, Washington, on November 23rd, 1928, at the hour of 10:30 A. M.

Said hearing will be held at the Commissioner's Office in the Court House in Wenatchee, Washington to determine whether a proposed County road shall be established, being a change in the South Lake Shore Road along the Southerly side of Lake Chelan, the width of said road shall be 60 feet and the termini and route thereof as recommended in the County Engineer's report is as follows:

Commencing at survey station 420 plus 96.5 of So. Lake Shore Road, as of record being an interior point in Lot 3 of Sec. 3, Twp. 27 N. Rg. 21, E. W. M.; running thence from a course N. 63 deg. 52 min. W. on a 20 deg. curve to left through an angle of 35 deg. 26 min. 177.2 ft.; thence S. 80 deg. 42 min. W. 3.5 feet; thence on a 21 deg. curve to right through an angle of 33 deg. 41 min. 160.4 feet; thence N. 65 deg. 37 min. W. 215.1 feet; thence on a 6 deg. curve to right, through an angle of 7 deg. 19 min. 121.9 feet; thence N. 58 deg. 18 min. W. 656.2 feet; thence on a 4 deg. curve to left through an angle of 37 deg. 33 min. 938.8 feet; thence S. 84 deg. 09 min. W. 326.6 feet; thence on a 16 deg. 00 min. curve to the right through an angle of 47 deg. 01 min. 293.9 feet; thence N. 48 deg. 50 min. W. 290.3 feet; thence on an 8 deg. 00 min. curve to left through angle of 36 deg. 58 min. 462.1 feet; thence N. 85 deg. 48 min. W. 61.5 feet; thence on a 12 deg. 00 min. curve to right through an angle of 34 deg. 16 min. 285.5 feet; thence N. 51 deg. 32 min. W. 75.1 feet; thence on a 12 deg. 00 min. curve to left, through an angle of 33 deg. 35 min. 279.9 feet; thence N. 85 deg. 07 min. W. 156.1 feet; thence on a 10 deg. 00 min. curve to right through an angle of 30 deg. 27 min. 304.5 feet; thence N. 54 deg. 40 min. W. 442.7 feet; thence on a 6 deg. 00 min. curve to right through an angle of 19 deg. 29 min. 324.7 feet; thence N. [80] 35 deg. 11 min. W. 106.6 feet; thence on a 2 deg. 00 min. curve to left through an angle of 8 deg. 09 min. 407.5 feet; thence N. 43 deg. 20 min. W. 231.9

feet; thence on a 6 deg. 00 min. curve to right through an angle of 15 deg. 03 min. 250.8 feet; thence N. 28 deg. 17 min. W. 131.6 feet, and ending at survey station 488 plus 00.9 (an intersection with Twenty-five Mile Creek Road), being an interior point in S.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$ of Sec. 4, Twp. 27 N. Rg. 21, E. W. M., the whole distance being about 1.3 miles, said road to be known as the So. Lake Shore Extension Road, all in Chelan County, Washington.

At said hearing any interested persons may appear and be heard for or against the establishment of the proposed change, in the South Lake Shore Road.

Dated at Wenatchee, Washington, this 31st day of October, 1928.

A. V. SHEPHARD,
Clerk of the Board. [81]

In the Matter of the Establishment of the Change in
South Lake Shore Extension Road, Chelan
County.

ORDER OF ESTABLISHMENT.

In the Matter of the Establishment of the Change in South Lake Shore Extension Road, Chelan County, the Board finds as follows:

First. That the Resolution therefor was passed on the 30th day of October, 1928, whereby the Board of County Commissioners declared their intention to lay out and establish said road, and the County

Engineer was duly directed to examine and if necessary survey the route of said proposed road.

Second. That on the 30th day of October, 1928, the County Engineer filed in the office of the Board his report in writing and at the same time a map and field notes of the proposed road, as provided by law, and the 23d day of November, 1928, was set as the day for hearing on said report, and legal notice of such hearing was duly given.

Third. That said report of the County Engineer shows:

(1) That in his opinion said proposed road is a necessity and ought to be established and opened.

(2) The terminal points, general course and length of road.

(3) His recommendation that said road be established not less than sixty nor more than one hundred feet in width.

(4) A list of persons interested in lands over which said road passes who consented to the establishment of the road and waived all claims to damages.

(5-6) A list of names of persons interested in lands through which the road passes who have not consented to the establishment of the road; and an estimate of the benefits and damages to non-consenting owners of land by reason of the establishment of said road as follows:

Part of Section	Description of Land			Area		Name of Owner
	Sec.	Tp.	Rg.	Acres	100ths	
Lot 3	3	27	21	1	78	Margaret Rosborough
Lot 2	3	27	21	7	87	Margaret Rosborough
[82]						
Lot 1	3	27	21	2	02	Margaret Rosborough
Lot 6	4	27	21	1	85	Margaret Rosborough
SW $\frac{1}{4}$	SW $\frac{1}{4}$	3	27	21	02	Alice Barbee Wick
Lot 5	4	27	21		49	Alice Barbee Wick

(7) A description of each tract of land over which said road passes, with the name and place of residence or address of the owners, lessees, claimants or incumbrancers and the quantity or area of land taken from each tract.

(8) That the probable cost of the construction of the road, including all necessary bridges, culverts, and all clearing, grubbing and grading, will be \$15,650.00.

(9) That due notice of the time and place of the hearing of the establishment of said road on November 23, 1928, was given in the manner required by law, and the Board having examined the report of the Engineer, the map, and all other papers on file in the proceedings, and heard and considered all testimony and documentary evidence adduced for and against the establishment of the road, and having heretofore by an order duly passed awarded damages in the sum of \$1.00 to each of the non-consenting owners of land through which the right-of-way passes; and all other persons interested in lands to be taken having previously consented to the establishment of said road and having waived their claims to damages therefor, and the Board being satisfied that the said road would be of public utility.

IT IS ORDERED BY THE BOARD, all the members concurring, that the Change South Lake Shore Extension road be established as follows:

Commencing at survey station 420+96.5 of South Lake Shore Road as of record, the same being an interior point in Gov't Lot 3, of Sec. 3, Twp. 27 N., Rg. 21, E. W. M., runs thence in a general north-west direction across Gov't Lots 3, 2 and 1 and the SW.¼ of SW.¼ of Sec. 3, Twp. 27 N., [83] Rg. 21, E. W. M., and Gov't Lots 6 and 5 of Sec. 4, Twp. 27 N., Rg. 21, E. W. M., and the SW.¼ of NE.¼ of Sec. 4, Twp. 27 N., Rg. 21, E. W. M., and ends at survey sta. 488+00.9 being an interior point in the SW.¼ of NE.¼ of Sec. 4, Twp. 27 N., Rg. 21, E. W. M., the total length being 1 mile 146 rods and 15.4 feet, and as shown upon the map of the County Engineer, and that from henceforth said road shall be a County Road of sixty feet in width, and that the same be opened according to law.

Done this 23d day of November, 1928.

J. A. WILSON,

W. J. TAYLOR,

Board of Commissioners of Chelan County, Wash.

Attest: A. V. SHEPHARD,

Clerk of Board. [84]

State of Washington,
County of Chelan,—ss.

I, the undersigned Clerk of the Board of County Commissioners of Chelan County, State of Washington, do hereby certify that the foregoing is a true and correct copy of ALL proceedings before the Board of County Commissioners of Chelan

County, Washington, in the matter of the establishment of South Shore Extension Road as of record in this office.

WITNESS my hand and official seal, this 4th day of June, 1930.

A. V. SHEPHARD,

Deputy Auditor and Clerk of the Board of County Commissioners.

[Chelan County

Auditor's

Seal

State of Washington] [85]

Filed Jun. 23, 1930.

[Title of Court and Cause—No. L.-4502.]

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER OF PUBLIC USE
AND NECESSITY.

The above-entitled cause came on regularly for trial before the Honorable J. Stanley Webster, Judge of the above-entitled court, upon the application of the petitioner for an order adjudicating public use and necessity; the Court having heretofore considered respondents' special appearance and motion to quash, special appearance and motion to make more definite and certain, special appearance and demurrer, and each of them, and having announced that the same and each of them would be overruled and denied; petitioner appearing at the hearing on the question of public use and necessity

by Sam M. Driver, Deputy Prosecuting Attorney of Chelan County, Washington, respondents failing to appear in person or by attorney, and the Court having duly heard and considered the evidence and being fully advised in the premises, makes the following

FINDINGS OF FACT.

I.

That each and all of the respondents in the above-entitled cause were duly served in the *ammner* prescribed by law with the notice and petition herein, and that this Court has jurisdiction of respondents, and of each and all of them, and of the subject matter of these proceedings. That the respondents are all the owners, encumbrancers and persons or parties interested in the property described in the notice and petition herein. [86]

II.

That at all times herein mentioned the petitioner, Chelan County, Washington, was and now is a duly constituted, organized and existing county and legal subdivision of the State of Washington.

III.

On the 30th day of October, 1928, the Board of County Commissioners of Chelan County, Washington, by unanimous vote, passed a resolution and caused the same to be entered upon the minutes of said Board, declaring that the laying out and establishment of a county road along the south shore of Lake Chelan from a point in the interior of Lot 3,

Section 3, Township 27 N., R. 21 E., W. M., at survey station 420 plus 96.5 of South Lake Shore Road as established and of record, and running thence in a general northwesterly direction a distance of approximately 1.3 miles to survey station 488 plus 00.9, an interior point in the SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of Section 4, Township 27 N., R. 21 E., W. M., being a point of intersection with the Twenty-five Mile Creek Road,—to be a public necessity and declaring the intention of said Board to lay out and establish said road and directing the County Engineer to report upon said project, all in accordance with Chapter 173, Session Laws of Washington, 1925.

IV.

That thereupon the County Engineer made an examination of said proposed road and a survey thereof, and made a report to said Board in writing, as required by law, in which report the County Engineer found, among other things, said proposed road to be practicable and the construction thereof to be a public necessity, and filed with said report a map of the proposed road, as required by law, together with his field notes and profiles of such survey. And that thereafter and on the 30th day of October, 1928, the Board of County Commissioners of Chelan County set the matter of the laying out and establishment of said road and the report of the [87] County Engineer thereon, for hearing on November 23, 1928, at the office of the Board of County Commissioners in the courthouse at *Weantchee*, Washington, and caused notice of

said hearing to be posted and published in the form and for the length of time provided by law.

V.

That on the said 23d day of November, 1928, a public hearing on the laying out and establishment of said road and upon the report of the County Engineer thereon, was held by said Board of County Commissioners, and the said Board made and entered its order finding said road to be a public necessity and establishing the said road as a public highway, on the route designated and described in the report of the said County Engineer. It was and is further provided by said order of the Board of County Commissioners on November 23, 1928, that the Prosecuting Attorney for Chelan County be directed to proceed under the power of eminent domain to acquire such lands and other property or property rights as may be necessary for such new highway in the manner provided by law for the taking of private property for public use, and commence and prosecute to a conclusion condemnation suits for the acquisition of property and rights of way for said new highway as so laid out and established.

VI.

That petitioner has been unable to agree with the respondents for the purchase of the right of way hereinafter described, and in order to construct the said highway upon the route laid out and established by the said Board of County Commissioners, it is necessary for the petitioner to acquire a right

of way for highway purposes, more particularly described as follows, to wit:

A road right of way 60 feet in width over and across Lot 5, Section 4, T. 27 N., R. 21 E., W. M., particularly located and described as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N., R. 21 E., W. M., and run thence N. $0^{\circ} 44'$ E., following the section line between said Sections 3 and 4, a distance of 1976.6 feet; thence N. $85^{\circ} 07'$ W., 351.3 feet; thence N. $54^{\circ} 40'$ W., 762.7 feet; thence [88] N. $35^{\circ} 11'$ W., 240.6 feet more or less to the south boundary line of said Lot 5 of Section 4, T. 27 N., R. 21 E., W. M., the initial point and place of beginning of this description. Thence a strip of land 30 feet wide on the right side and 30 feet wide on the left side of the following described line. From the initial point, as hereinabove described, continue thence N. $35^{\circ} 11'$ W., 30 feet; thence on a 2° curve to the left having a central angle of $6^{\circ} 28'$ a distance of 323.5 feet more or less to the west line of said Lot 5 of Section 4, T. 27 N., R. 21 E., W. M., the end of this description, which described parcel of land contains 0.49 acres more or less.

Also, a road right of way over and across the northeast corner of the SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, T. 27 N., R. 21 E., W. M., being only that part of the right of way of the South Lake Shore Extension Road that overlaps the

said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said Section 3, and being more particularly described and located as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N., R. 21 E., W. M., and run thence N. $0^{\circ} 44'$ E., following the section line between said sections 3 and 4 a distance of 1976.6 feet; thence S. $85^{\circ} 07'$ E., 240.7 feet; thence S. $51^{\circ} 32'$ E., 640.5 feet; thence S. $85^{\circ} 48'$ E., 809.1 feet; thence S. $48^{\circ} 50'$ E., 752.4 feet; thence on a 6° curve to the left, having a radius of 955 feet, a distance of 66 feet more or less to the northeast corner of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, the initial point and place of beginning of this description. Thence an irregular shaped piece of land bounded by a line running south from the initial point as hereinabove described, following the east boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, to a point 30 feet distant from the survey line of said South Lake Shore Extension Road; thence in a northwesterly direction on a curve having a radius of 985 feet, being parallel and 30 feet distant from survey alignment curve at this place, to the north boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3; thence east following the north boundary line of said SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 3, to the initial point and place of beginning, which described parcel of land contains 0.02 acre more or less.

VII.

That the object for which this proceeding is brought is to ascertain and determine the compensation to be made in money, to the owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting the lands, real estate, premises and other property above described in the manner above set forth, and for a release from all liability for all damages to the adjoining lands of the respondents not taken, in any manner arising from the taking of the above-described property and the construction of a public highway thereon.

VIII.

That the object for which said lands, real estate, premises and other property are sought to be appropriated, acquired and injuriously affected by your petitioner is a public object and use, [89] and that the public interest requires the construction of the said highway upon the above-described right of way, and the said lands, real estate, premises and other property sought to be appropriated and injuriously affected are required and necessary for the laying out, establishment and construction of said highway.

IX.

That the following are the names of each and every owner, encumbrancer and person or party interested in the above-described property, or any part thereof, so far as the same can be ascertained from the public records or otherwise, namely, Alice

Barbee Wick, Theodore S. Tettermer and Jane Doe Tettermer, his wife (true Christian name unknown).

X.

That in order to acquire title to said property above described, it is necessary for the petitioner to condemn said property and to acquire the same for the public purposes aforesaid by appropriate proceedings under and by virtue of the power of eminent domain conferred upon the petitioner in common with other like corporations in and by the laws of the State of Washington, and the petitioner has made said petition for said purposes.

Pursuant to the foregoing findings of fact the Court makes the following

CONCLUSIONS OF LAW.

That the public interest requires the prosecution of the enterprise of the petitioner, and that the land, real estate and premises sought to be appropriated in the above-entitled cause is required and necessary for the purpose of the construction of said public highway. [90]

ORDER.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the contemplated use for which the lands, real estate and premises herein are sought to be appropriated is a public use, and that the public interest requires the construction of the highway mentioned in said petition, and that the lands, real estate and premises herein sought

to be appropriated and the interest of the above-named respondents therein to the extent herein provided, is required and necessary for the purpose of the construction of said highway, and that said petitioner is entitled to take said lands, real estate and premises and the interest of the respondents therein to the extent herein provided, for a right of way for highway purposes, under and by virtue of the power of eminent domain upon the payment of just compensation to the respondents herein, to be determined according to law.

The lands, real estate and premises, and the interest in the lands, real estate and premises hereby authorized to be taken as a right of way for highway purposes are more particularly described as follows, to wit: [91]

A road right of way 60 feet in width over and across Lot 5, Section 4, T. 27 N. R. 21 E., W. M., particularly located and described as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N., R. 21 E., W. M., and run thence N. $0^{\circ} 44'$ E., following the section line between said Sections 3 and 4, a distance of 1976.6 feet; thence N. $85^{\circ} 07'$ W., 351.3 feet; thence N. $54^{\circ} 40'$ W., 762.7 feet; thence N. $35^{\circ} 11'$ W., 240.6 feet more or less to the south boundary line of said Lot 5 of Section 4, T. 27 N., R. 21 E., W. M., the initial point and place of beginning of this description. Thence a strip of land 30 feet wide on the right side and 30 feet wide on the left side of the following

described line. From the initial point, as hereinabove described, continue thence N. $35^{\circ} 11'$ W., 30 feet; thence on a 2° curve to the left having a central angle of $6^{\circ} 28'$, a distance of 323.5 feet more or less to the west line of said Lot 5 of Section 4, T. 27 N., R. 21 E., W. M., the end of this description, which described parcel of land contains 0.49 acres more or less.

Also, a road right of way over and across the northeast corner of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, T. 27 N., R. 21 E., W. M., being only that part of the right of way of the South Lake Shore Extension Road that overlaps the said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 3, and being more particularly described and located as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N., R. 21 E., W. M., and run thence N. $0^{\circ} 44'$ E., following the section line between said sections 3 and 4 a distance of 1976.6 feet; thence S. $85^{\circ} 07'$ E. 240.7 feet; thence S. $51^{\circ} 32'$ E., 640.5 feet; thence S. $85^{\circ} 48'$ E., 809.1 feet; thence S. $48^{\circ} 50'$ E., 752.4 feet; thence on a 6° curve to the left, having a radius of 955 feet, a distance of 66 feet more or less to the northeast corner of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, the initial point and place of beginning of this description. Thence an irregular shaped piece of land bounded by a line running south from the initial point as hereinabove described, following the east boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of

Section 3, to a point 30 feet distant from the survey line of said South Lake Shore Extension Road; thence in a northwesterly direction on a curve having a radius of 985 feet, being parallel and 30 feet distant from survey alignment curve at this place, to the north boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3; thence east following the north boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, to the initial point and place of beginning, which described parcel of land contains 0.02 acre more or less.

Done in open court this 23d day of June, 1930.

J. STANLEY WEBSTER,
Judge. [92]

[Title of Court and Cause—No. L.-4502.]

VERDICT.

We, the jury in the above-entitled cause, find for the respondents in the sum of \$50.00.

EUSTACE LE MASTER,
Foreman.

Filed Nov. 20, 1930. [93]

Filed Dec. 15, 1930.

In the District Court of the United States, Eastern
District of Washington, Northern Division.

No. L.-4502.

CHELAN COUNTY, WASHINGTON, a Municipal Corporation,

Petitioner,

vs.

ALICE BARBEE WICK and THEODORE S.
TETTEMER and JANE DOE TETTE-
MER, His Wife (True Christian Name Un-
known),

Respondents.

JUDGMENT ON VERDICT.

This cause coming on regularly for trial before the above-entitled court, Honorable J. Stanley Webster, Judge thereof and before a jury, at the courtroom of the above-entitled court in the city of Spokane, State of Washington, the petitioner appearing by its attorney, J. A. Adams, and the respondents Alice Barbee Wick and Theodore S. Tettermer and Jane Doe Tettermer, his wife (true Christian name unknown), failing to appear in person or by attorney, and it appearing to the court that an order adjudicating public use and necessity has heretofore been entered herein, and a jury having been sworn to try the issues of the case and having returned its verdict making an assessment of damages to the re-

spondents herein by reason of the appropriation and use of the property described in the petition herein, and the court being satisfied by proof that all parties interested in the land and premises described in the petition of the petitioner and hereinafter described, have been served with notice herein as required by law, and being further satisfied by competent proof that the contemplated use for which said land, real estate, premises or other property is sought to be appropriated is a public use, namely: a right of way for the county road and public highway described in the petition herein, which road has been duly and regularly established by proper proceedings by and before the County Commissioners of Chelan County, Washington, and the court having accordingly made and entered herein its order of adjudication of [94] public use and necessity for appropriation,—

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that just compensation be paid by Chelan County, Washington, to the owners of said property, and to all tenants, encumbrancers and others interested, for the taking and injuriously affecting such land, real estate and premises, in the sum of Fifty Dollars (\$50.00) with costs to the respondents in the sum of \$——.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said respondents, Alice Barbee Wick and Theodore S. Tetteimer and Jane Doe Tetteimer, his wife (true Christian name unknown), do have and recover from Chelan County, Washington, said sum for the taking and appro-

priating of the lands, real estate and premises for the uses set forth in the petition on file herein, and upon payment by said Chelan County, Washington, of said just compensation and damages to the respondents, or upon depositing the same for the use and benefit of the respondents with the Clerk of the above-entitled court to be paid out under the direction of said court or the Judge thereof, that the property hereinafter described, and the title thereto, free and clear of any and all encumbrances of any nature whatsoever, shall pass to and become vested in Chelan County, Washington, a municipal corporation.

The property, and title thereto, for a right of way for highway purposes hereby condemned and appropriated to the use of said Chelan County, Washington, are situated in said Chelan County, State of Washington, and particularly described as follows:

A road right of way sixty (60) feet in width over and across Lot Five (5), Section Four (4), Township Twenty-seven (27) North, Range Twenty-one (21), E., W. M., particularly located and described as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, Township 27 N., R. 21 E., W. M., and run thence N. $0^{\circ} 44'$ E., following the section line between said Sections 3 and 4, a distance of 1976.6 feet; thence N. $85^{\circ} 07'$ W., 351.3 feet; thence N. $54^{\circ} 40'$ W., 762.7 feet; thence N. $35^{\circ} 11'$ W., 240.6 feet more or less to the south boundary line of said Lot 5 of Section 4, T. 27 N., R. 21 E., W. M., the initial point and

place of beginning of this description. Thence a strip of [95] land 30 feet wide on the right side and 30 feet wide on the left side of the following described line: From the Initial point, as hereinabove described, continue thence N. $35^{\circ} 11'$ W. 30 feet; thence on a 2° curve to the left having a central angle of $6^{\circ} 28'$, a distance of 323.5 feet more or less to the west line of said Lot 5 of Section 4, T. 27 N., R. 21 E., W. M., the end of this description, which described parcel of land contains 0.49 acre more or less.

Also, a road right of way over and across the northeast corner of the $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 3, T. 27 N., R. 21 E., W. M., being only that part of the right of way of the South Lake Shore Extension Road that overlaps the said $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of said Section 3, and being more particularly located and described as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N., R. 21 E., W. M., and run thence N. $0^{\circ} 44'$ E., following the section line between said sections 3 and 4 a distance of 1976.6 feet; thence S. $85^{\circ} 07'$ E. 240.7 feet; thence S. $51^{\circ} 32'$ E., 640.5 feet; thence S. $85^{\circ} 48'$ E., 809.1 feet; thence S. $48^{\circ} 50'$ E., 752.4 feet; thence on a 6° curve to the left, having a radius of 955 feet, a distance of 66 feet more or less to the northeast corner of said $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 3, the initial point and place of beginning of this description. Thence an irregular shaped piece of land bounded by a

line running south from the initial point as hereinabove described, following the east boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, to a point 30 feet distance from the survey line of said South Lake Shore Extension Road; thence in a northwesterly direction on a curve having a radius of 985 feet, being parallel and 30 feet distance from survey alignment curve at this place, to the north boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3; thence east following the north boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, to the initial point and place of beginning, which described parcel of land contains 0.02 acre more or less.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon such payment being made by said Chelan County, Washington, a decree shall be entered in accordance herewith and releasing said Chelan County, Washington, from any and all liability to the respondents and to any and all persons having or claiming to have any interest in and to the property described herein, for any and all damages to the lands and property above described, and to any and all lands lying contiguous or adjacent to said lands hereinabove described, in any manner arising from or to grow out of the taking of the property herein described, or the laying out, establishment, construction, maintenance, or operation of a public highway thereon, and that said Chelan County, Washington, shall be and become the owner of the said above-described tracts or parcels of land, real [96] estate and premises for the

purpose of constructing, maintaining and operating a public highway thereon, and shall be entitled to enter into possession of the same for said purposes, and that such payment as herein ordered and directed shall be payment in full for the taking, condemnation, appropriation and use of the same.

Done in open court this 15th day of December, 1930.

J. STANLEY WEBSTER,
Judge. [97]

[Title of Court and Cause—No. L.—4502.]

MEMO IN ACCORDANCE WITH ITEM 13 OF
APPELLANT'S PRAECIPE.

Chelan County Warrant in the sum of \$80.00 received by the Clerk, U. S. District Court, December 1, 1930.

Said sum credited on the Books of the Clerk, U. S. District Court in the above-entitled cause, December 26, 1930. [98]

Filed Dec. 15, 1930.

In the District Court of the United States, Eastern
District of Washington, Northern Division.

No. L.-4502.

CHELAN COUNTY, WASHINGTON, a Municipal Corporation,

Petitioner,

vs.

ALICE BARBEE WICK and THEODORE S.
TETTEMER, and JANE DOE TETTE-
MER, His Wife (True Christian Name Un-
known),

Respondents.

DECREE OF APPROPRIATION.

This cause coming on regularly for hearing upon the application of petitioner herein, for a decree of appropriation of the property mentioned in the petition on file herein, and it appearing to the Court that heretofore a verdict was duly rendered in the above-entitled cause in favor of respondents, Alice Barbee Wick and Theodore S. Tettermer and Jane Doe Tettermer, his wife (true Christian name unknown), in the sum of Fifty Dollars (\$50.00) and that thereafter a judgment was duly and regularly entered upon said verdict in favor of the respondents and against the petitioner in said sum, and costs; and it further appearing to the Court that said petitioner has heretofore deposited with the

Clerk of the above-entitled court the said sum of Fifty Dollars (\$50.00) and Thirty Dollars (\$30.00) taxed as costs for the benefit of said respondents to be paid out under the direction of this court or the Judge thereof,—

Now, on motion of J. A. Adams, attorney for the petitioner, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that there is hereby appropriated and granted to and vested in the above-named petitioner Chelan County, Washington, a municipal corporation, for its corporate purposes, a right of way for highway purposes in and to the following described property, lands, and premises, situate in the County of Chelan, State of Washington, to wit: [99]

A road right of way sixty (60) feet in width over and across Lot 5, Section 4, T. 27 N., R. 21 E., W. M., particularly located and described as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N., R. 21 E., W. M., and run thence N. $0^{\circ} 44'$ E., following the section line between said Sections 3 and 4, a distance of 1976.6 feet; thence N. $85^{\circ} 07'$ W., 351.3 feet; thence N. $54^{\circ} 40'$ W., 762.7 feet; thence N. $35^{\circ} 11'$ W., 240.6 feet more or less to the south boundary line of said Lot 5 of Section 4, T. 27 N., R. 21 E., W. M., the initial point and place of beginning of this description. Thence a strip of land 30 feet wide on the right side and 30 feet wide on the left side of the following described line. From the initial point, as herein-

above described, continue thence N. $35^{\circ} 11'$ W., 30 feet; thence on a 2° curve to the left having a central angle of $6^{\circ} 28'$, a distance of 323.5 feet more or less to the west line of said Lot 5 of Section 4, T. 27 N., R. 21 E., W. M., the end of this description, which described parcel of land contains 0.49 acre more or less.

Also, a road right of way over and across the northeast corner of the $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 3, T. 27 N., R. 21 E., W. M., being only that part of the right of way of the South Lake Shore Extension Road that overlaps the said $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of said Section 3, and being more particularly located and described as follows, to wit:

Tying to the section corner common to Sections 3, 4, 9 and 10, T. 27 N., R. 21 E., W. M., and run thence N. $0^{\circ} 44'$ E., following the section line between said sections 3 and 4 a distance of 1976.6 feet; thence S. $85^{\circ} 07'$ E. 240.7 feet; thence S. $51^{\circ} 32'$ E., 640.5 feet; thence S. $85^{\circ} 48'$ E., 809.1 feet; thence S. $48^{\circ} 50'$ E., 752.4 feet; thence on a 6° curve to the left, having a radius of 955 feet, a distance of 66 feet more or less to the northeast corner of said $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 3, the initial point and place of beginning of this description. Thence an irregular shaped piece of land bounded by a line running south from the initial point as hereinabove described, following the east boundary line of said $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 3, to a point 30 feet distance from the

survey line of said South Lake Shore Extension Road; thence in a northwesterly direction on a curve having a radius of 985 feet, being parallel and 30 feet distance from survey alignment curve at this place, to the north boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3; thence east following the north boundary line of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, to the initial point and place of beginning, which described parcel of land contains 0.02 acre more or less.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Chelan County, Washington, a municipal corporation, be and it hereby is released from any and all liability to the respondents herein and to any and all persons having or claiming to have any interest in and to the property described herein, or lying contiguous or adjacent thereto, for any and all damages in any manner arising from and to grow out of the taking of said property or the laying out, establishment, construction, maintenance or operation of a public [100] highway thereon. That said Chelan County, Washington, a municipal corporation, is entitled to enter into the immediate possession of said property, and that the said payment hereinabove referred to is and shall constitute full compensation for the taking, condemnation, appropriation, and use of the property, lands and premises herein described.

Done in open court this 15th day of December, 1930.

J. STANLEY WEBSTER,
Judge. [101]

[Title of Court and Cause—No. L.-4502.]

SUBSTITUTION OF ATTORNEYS.

To the Clerk of the Above-entitled Court:

Enter our appearance as attorneys of record for respondents in the above-entitled cause, reserving special appearance heretofore made herein.

Dated at Spokane, Washington, March 5th, 1931.

BERKEY & COWAN,

Attorneys for Defendants.

P. O. Address: 204-6 Wall St.,

Bank Bldg., Spokane, Washington.

Filed Mar. 5, 1931. [102]

[Title of Court and Cause—No. L.-4502.]

PETITION FOR LEAVE OF COURT TO FILE
MOTION FOR NEW TRIAL.

To the Honorable J. STANLEY WEBSTER,
Judge of the Above-entitled Court:

Comes now the respondents by their counsel, Messrs. Berkey & Cowan, and still reserving their special appearance herein, respectfully request this Honorable Court to grant them leave to file a motion for a new trial of the above-entitled cause.

This petition will be based upon the records and files in the above-entitled cause and upon the affida-

vit of Chas. F. Cowan, one of defendants' attorneys, hereto attached and made a part hereof.

BERKEY & COWAN,
Attorneys for Defendants.

P. O. Address: 204-6 Wall St.,
Bank Bldg., Spokane, Washington. [103]

United States of America,
Eastern District of Washington,
County of Spokane,—ss.

Chas. F. Cowan, being first duly sworn on oath, says: That affiant is one of the attorneys of record for the defendants in the above-entitled action, substitution of said attorneys of record having been made on March 5th, 1931. That J. D. Campbell, the former attorney of record for said defendants, died on or about January 10, 1930. That affiant was not employed to represent said defendants in the above cause until February 28th, 1931, and after the time fixed by rule of this court within which to file motion for a new trial, but within the term and within three months from the date of the entry of judgment in said cause, all of which will more fully appear by the records and files herein.

CHAS. F. COWAN.

Subscribed and sworn to before me this 5th day of March, 1931.

[Seal] JAMES A. LYBECKER,
Notary Public in and for said County and State,
Residing at Spokane, Wash.

Filed Mar. 5, 1931. [104]

[Title of Court and Cause—No. L.-4502.]

ORDER DENYING MOTION FOR LEAVE TO
FILE MOTION FOR NEW TRIAL.

This matter coming on for hearing upon the petition of Messrs. Berkey & Cowan, attorneys for respondents, for leave to file a motion for new trial of the above-entitled cause, and the Court being fully advised in the premises,—

NOW, THEREFORE, IT IS HEREBY ORDERED, that said motion be, and the same is hereby denied, to which respondents except and their exceptions are hereby allowed.

Dated this 6th day of March, 1931.

J. STANLEY WEBSTER,

Judge of the United States District Court.

Filed Mar. 6, 1931. [105]

[Title of Court and Cause—No. L.-4502.]

PETITION FOR APPEAL AND ORDER
GRANTING SAME.

To Chelan County, Washington, a Municipal Corporation, and to J. A. Adams and Sam M. Driver, Attorneys for Appellee:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE, that Margaret Rosborough and Alice Barbee Wick, respondents in the above-entitled cause, hereby appeal to the United States

Circuit Court of Appeals for the Ninth Circuit, from the verdict of the jury awarding damages, judgment of the court thereon, and decree of appropriation, entered in the above-entitled cause on December 15th, 1930, and from the whole thereof.

That your petitioners file herewith their assignments of error based upon the record and intended to be urged by them on this, their appeal.

That your petitioners pray that their said appeal be granted and allowed and that citation issue herein as provided by law and that an order be made filing the amount of the bond to be given by your petitioners upon appeal; and, that a transcript of the record, proceedings [106] and papers, upon which said order, verdict and judgment were made and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioners will ever pray.

ALICE BARBEE WICK,
THEODORE S. TETTEMER and
JANE DOE TETTEMER, His Wife
(True Christian Name Unknown),

Appellants,
By BERKEY & COWAN,
Their Attorneys.

District of Washington,
County of Chelan,—ss.

Service of the within petition for appeal is hereby acknowledged in Wenatchee, Washington,

in said District, this 7th day of March, 1931, by the receipt of a copy thereof.

J. A. ADAMS and
SAM M. DRIVER,

Attorneys for Chelan County, Washington, Petitioner.

The petition granted, and the appeal allowed upon respondents giving bond conditioned as required by law in the sum of \$500.00.

Dated at Spokane, Wash., March 10th, 1931.

J. STANLEY WEBSTER,

Judge of the United States District Court.

Filed Mar. 10, 1931. [107]

[Title of Court and Cause—No. L.-4502.]

ASSIGNMENTS OF ERROR.

Alice Barbee Wick, Theodore S. Tetteimer and Jane Doe Tetteimer, his wife (true Christian name unknown), respondents in the above-entitled action, by Messrs. Berkey & Cowan, their attorneys, having filed notice of appeal as provided by law, that the respondents appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the verdict of the jury, judgment and decree of appropriation rendered thereon, on the 15th day of December, 1930, now make and file in support of said appeal, the following assignment of errors, upon which they will rely for reversal thereof.

I.

WANT OF JURISDICTION.

1. That the Court has no jurisdiction over the persons or property of the respondents, for the reason that the requirement of a once a week for two consecutive weeks publication of notice against nonresident owners in condemnation proceedings, by Acts approved March 21, 1890, page 294, and being Section 7647 of Pierce's Code of the State of Washington, is inadequate and confiscatory and contrary to the Constitution of the United States, and particularly paragraph 1 of the 14th Amendment thereof. [108]

II.

THAT THE PROPERTY OF RESPONDENTS
IS BEING TAKEN WITHOUT DUE
PROCESS OF LAW.

1. That the notice of petitioner's motion to have said case set for trial on Monday, May 26th, 1930, at 10:00 o'clock A. M. was received by respondents by mail at Philadelphia, Pennsylvania, on May 23d, 1930, thereby giving respondents insufficient time to appear, or to be represented thereat.

2. That the only notice of hearing for order of necessity was by registered mail and not received by respondents at Philadelphia, Pennsylvania, until May 31st, 1930, stating said cause had been set for hearing on June 5th, 1930, at 10:00 o'clock A. M. and did not give respondents sufficient time to appear and defend the same.

3. That notice of trial was likewise served upon respondents by mail, the same being received by

respondents at Philadelphia, Pennsylvania, on November 3d, 1930, stating that said case had been set for trial on November 20th, 1930, at 10:00 o'clock A. M., which did not give respondents sufficient time to prepare for trial and defend said cause.

4. That said notices were also served upon one Adrien W. Vollmer, who was not an attorney of record for these respondents or either of them, and who did not reside at Lakeside, Washington, as stated in said notices, and did not in anywise represent respondents.

III.

That the Court erred in denying respondents' motion to quash and in refusing to hold the following statutes of the State of Washington, void, as depriving respondents (now appellants), of due process of law secured by Paragraph 1 of the Fourteenth Amendment of the Constitution of the United States, to wit: Acts [109] approved March 13th, 1899, Chapter 94, p. 147, particularly Section 1, p. 147; March 17, 1903, Chapter 173, p. 360, particularly Section 2, p. 362; March 15, 1907, Chapter 159, p. 349, particularly Section 1, p. 349.

IV.

That the Court erred in denying appellants' motion to make more definite and certain, or in the alternative for a bill of particulars.

V.

That the Court erred in overruling appellants' demurrer.

VI.

INSUFFICIENCY OF THE RECORD TO JUSTIFY THE VERDICT AND THE JUDGMENT AND DECREE RENDERED THEREON AND THAT THE SAME IS AGAINST LAW.

1. That the Commissioners' proceedings, upon which the verdict and judgment are bases, are fatally defective and incomplete as shown by the record in this case.

2. That no showing is made in said Commissioners' proceedings, or the surveyors' report that any offer or statements of damages was made to respondents, or either of them prior to commencement of condemnation proceedings.

3. That it appears from Engineers' Report, that the survey for the road, was made on April 27th, and April 28th, May 12, 21, 22, June 22 and July 3, 1928, which was prior to and not in pursuance of the order of the County Commissioners directing such survey on October 30th, 1928, and as required by Chapter 173, Laws of 1925, and more particularly Section 3, thereof, of the Laws of the State of Washington. [110]

4. That the Commissioners' proceedings do not show that the prosecuting attorney was ordered to commence condemnation proceedings as provided for by Chapter 173, of the Laws of 1925, and more particularly Section 5 thereof, of the Laws of the State of Washington.

5. That the Commissioners' proceedings were not signed and sealed by the County Commissioners,

and attested by their Clerk, as required by Laws 1893, and on page 252 thereof, and approved March 10, 1893, and particularly Section 1663, of Pierce's Code of the State of Washington.

6. That the lands sought to be taken by the decree of appropriation, are incorrectly described, and vary from the surveyor's plat and field notes thereof on file herein.

7. That the award of damages was not paid in to the Clerk of the Court, prior to the entry of decree of appropriation and as provided for therein, and contrary to the provisions of Article 1, Section 16, of the Constitution of the State of Washington.

8. That no segregation or separate statement of damages was made to respondents in the verdict or judgment thereon, for their respective lands taken or damaged.

VII.

That the Court erred in entering a judgment on the verdict which purports to convey the fee to the road in question, rather than an easement for road purposes, as authorized by the provisions of Chapter 173, of the Laws of 1925, approved Jan. 15, 1926,

Dated at Spokane, in said Eastern District of Washington, this 6th day of March, 1931.

BERKEY & COWAN,

Attorneys for Respondents,

P. O. Address: 204-6 Wall St. Bank Bldg.,

Spokane, Washington. [111]

District of Washington,
County of Chelan,—ss.

Service of the within assignment of errors in hereby acknowledged in Wenatchee, Washington, in said District, this 7th day of March, 1931, by the receipt of a copy thereof.

J. A. ADAMS and
SAM M. DRIVER,

Attorney for Chelan County, Washington, Appellee.

Filed Mar. 10, 1931. [112]

Filed Mar. 23, 1931.

[Title of Court and Cause—No. L.-4502.]

AMENDED AND SUPPLEMENTAL ASSIGNMENTS OF ERROR.

Come now the respondents and present the following additional assignments of error in support of their appeal herein, and herewith request the Clerk to include the same in the transcript of the record on appeal.

VIII.

That the Court erred in refusing respondents' motion to quash and to set aside the pretended notice of filing and of hearing of the petition in condemnation; said motion being upon the ground, *inter alia*, that the condemnation statutes of the State of Washington, upon which these condemna-

tion proceedings were based, particularly that portion thereof (Session Laws of 1890, p. 295, Sec. 2, Pierce's Code, Section 7646) relating to notice and service upon nonresident owners is inadequate as to manner and time, and without due process of law, and is thus and otherwise contrary to Sections 3 and 16 of Article I, of the Constitution of the State of Washington, and the Fourteenth Amendment to the Constitution of the United States. [113]

IX.

That the Court erred in refusing to hold that certain eminent domain statute of the State of Washington, entitled by an Act to regulate the mode of proceeding to appropriate lands by corporations, approved March 21, 1890, Laws of 1890, p. 294, and laws amendatory thereof, are contrary to Sections 2, 3, and 16 of Article I of the Constitution of the State of Washington, and Section 2, Article VI, and the Fourteenth Amendment of the Constitution of the United States.

X.

That the Court erred in refusing to hold that the eminent domain statutes of the State of Washington are contrary to the provisions of the Constitution of the State of Washington, and the Constitution of the United States, and the Amendments thereto, and deny to these respondents their constitutional rights guaranteed to them thereunder.

XI.

That the Court erred in holding that the taking

of respondents' lands was for a public use and the entering of an order of necessity therein, and the same is contrary to respondents' rights under the Fourteenth Amendment of the Constitution of the United States.

XII.

That there is nothing in the record of the above-entitled cause, showing that jurisdiction was acquired over respondent, Alice Barbee Wick, either by personal service, or by description of any property belonging to her.

XIII.

That the Court erred in refusing respondents leave to file their motion for a new trial, because the same was tendered within the term, and within three months from the entry of judgment. [114]

XIV.

That the pretended service of notice upon one Adrian W. Vollmer was void and of no effect, for the reason that said Adrian W. Vollmer was not an attorney of record for respondents, or either of them, that he was not personally served with process or notice, and did not reside at Lakeside, Washington, and was not a resident of the State of Washington, and had not even visited therein, for a period of 23 months prior thereto.

For these errors, and the errors contained in the original assignments of error, these appellants, pray that the order of necessity, judgment on the verdict, and the decree of appropriation, entered in the above-entitled cause be reversed and set

aside, and a judgment rendered in favor of appellants, and for their costs.

BERKEY & COWAN,
Attorneys for Appellants,
P. O. Address: 204-6 Wall St. Bk. Bldg.,
Spokane, Washington.

State of Washington,
County of Spokane,—ss.

Chas. F. Cowan, being first duly sworn on oath, deposes and says: That I am one of the attorneys for appellants in the above-entitled cause, a citizen of the United States and of the State of Washington, above the age of twenty-one years: That I served the within amended and supplemental assignments of error in the above-entitled cause upon the appellee, Chelan County, Washington, a municipal corporation, on the 23d day of March, 1931, by depositing a true copy thereof properly sealed in an envelope for transmission thru the mail with postage fully prepaid thereon addressed to attorneys J. A. Adams and Sam M. Driver, Wenatchee, Washington, the attorneys of record for said appellee on said 23d day of March, 1931, and that there is a regular mail communication between said Spokane, Washington, and said Wenatchee, Washington.

CHAS. F. COWAN.

Subscribed and sworn to before me this 23d day of Mar., 1931.

[Notary Seal] R. E. PORTERFIELD,
Notary Public, Residing at Spokane, Washington.

[Title of Court and Cause—No. L.—4502.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Alice Barbee Wick and Theodore S. Tettermer, appellants above, as principal, and United States Fidelity & Guaranty Company, a corporation organized and existing under and by virtue of the laws of the State of Maryland, duly authorized to transact business in the State of Washington, and fully qualified to execute bonds and undertakings in any and all federal courts of the United States of America, as surety, are held and firmly bound unto Chelan County, appellee, its successors and assigns, in the full and just sum of Five Hundred (\$500.00) Dollars, for the payment of which sum, well and truly to be made, the principals hereby bind themselves, their heirs, administrators, executors, and the said surety company binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this sixth day of March, A. D. 1931.

WHEREAS, in the District Court, of the United States in and for the Eastern District of Washington, Northern Division, in a proceeding in said court between Chelan County, Washington, a municipal corporation, as petitioner, and Alice Barbee Wick and Theodore S. Tettermer et ux., as respondents, a judgment and decree were entered in favor of said petitioner and against the [116] said respond-

ents, on the 15th day of December, 1930, and the said Alice Barbee Wick and Theodore S. Tettermer et ux., appealing therefrom to the United States Circuit Court of Appeals for the Ninth Circuit,—

NOW, THEREFORE, the condition of the above obligation is such that if the said appellants, shall prosecute their appeal to effect and answer all costs if they fail to make their plea good, then the above obligation is void; else to remain in full force and virtue.

ALICE BARBEE WICK. (Seal)

THEODORE S. TETTERMER. (Seal)

UNITED STATES FIDELITY AND
GUARANTY COMPANY.

[Seal] By GUY E. FRANKENFIELD,
Attorney-in-fact.

Attest: _____.

_____.

This bond is approved as to form, amount and sufficiency of surety this 10th day of March, 1931.

J. STANLEY WEBSTER,

United States District Judge.

Filed Mar. 10, 1931. [117]

[Title of Court and Cause—No. L.-4502.]

CITATION ON APPEAL.

United States of America,—ss.

To Chelan County, Washington, a Municipal Corporation, and to J. A. Adams, and Sam M.

Driver, Your Attorneys, GREETING:

You are hereby cited and admonished to be and

appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, State of California, within thirty (30) days from the date of this citation, pursuant to an appeal filed in the Clerk's office of the United States District Court for the Eastern District of Washington, Northern Division, wherein the respondents in the above-entitled cause are appellants, and you as petitioner in said cause, are appellee, to show cause, if any there be, why verdict, judgment and decree mentioned in said appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable J. STANLEY WEBSTER, the United States District Judge, this 10th day of March, 1931.

J. STANLEY WEBSTER,
United States District Judge. [118]

District of Washington,
County of Chelan,—ss.

Service of the within citation on appeal is hereby acknowledged in Wenatchee, Washington, in said District, this 11th day of March, 1931, by the receipt of a copy thereof.

J. A. ADAMS,
SAM M. DRIVER,

Attorneys for Chelan County, Washington, Appellee.

Filed Mar. 12, 1931. [119]

[Title of Court and Cause—No. L.-4502.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

Please make up and certify to the Circuit Court of Appeals, Ninth Judicial Circuit, the following papers and records in the above-entitled cause, together with maps of surveys:

1. Appellants' transcript.
2. Special appearance and motion to quash.
3. Order denying motion to quash.
4. Demurrer, preserving special appearance.
5. Motion to make more definite and certain, etc.
6. Order denying motion and bill of particulars, and overruling demurrer.
- 6¹/₂. Motion for setting case.
7. Proofs of mailing notices of hearings and trial.
8. Affidavit of Adrian Winston Vollmer and affidavit of mailing.
9. Transcript of Commissioners' proceedings.
10. Findings of fact, conclusions of law, and order of public necessity.
11. Verdict.
12. Judgment on verdict. [120]
13. Date of Clerk's receipt of award.
14. Decree of appropriation.
15. Substitution of attorneys.
16. Petition for leave to file motion for new trial.
17. Order denying same.
18. Petition for appeal, and order allowing same.
19. Assignment of errors.

20. Bond on appeal and approval hereof.
- 20 $\frac{1}{2}$. Citation.
21. This praecipe.
22. Name and P. O. Address of Attorneys.
23. Index.

BERKEY & COWAN,
Attorneys for Appellants,
P. O. Address: 204-6 Wall St. Bk. Bldg.,
Spokane, Washington.

District of Washington,
County of Chelan,—ss.

Service of the within praecipe for transcript of record is hereby acknowledged in Wenatchee, Washington, in said District, this 11th day of March, 1931.

J. A. ADAMS,
SAM M. DRIVER,
Attorneys for Chelan County, Washington, Ap-
pellee.

Filed Mar. 12, 1931. [121]

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[Title of Court and Cause—No. L.-4502.]

AMENDED PRAECIPE FOR TRANSCRIPT
OF RECORD.

To the Clerk of the Above-entitled Court:

You will include in the record of the above-entitled cause the stipulation of the attorneys for the respective parties with reference to statement of

evidence and praecipe on appeal, together with the original citation on appeal.

BERKEY & COWAN,
Attorneys for Appellants.

State of Washington,
County of Spokane,—ss.

Chas. F. Cowan, being first duly sworn on oath, deposes and says: That I am one of the attorneys for appellants in the above-entitled cause, a citizen of the United States and of the State of Washington, above the age of twenty-one years: That I served the within amended praecipe in the above-entitled cause upon the appellee, Chelan County, Washington, a municipal corporation, on the 18th day of March, 1931, by depositing a true copy thereof properly sealed in an envelope for transmission thru the mail with postage fully prepaid thereon addressed to attorneys, J. A. Adams and Sam M. Driver, Wenatchee, Washington, the attorneys of record for said appellee on said 18th day of March, 1931, and that there is a regular mail communication between said Spokane, Washington, and said Wenatchee, Washington.

CHAS. F. COWAN.

Subscribed and sworn to before me this 18th day of Mar., 1931.

[Seal]

CHAS. B. VAN LIEU,
Notary Public Residing at Spokane, Wash-
ington.

Filed Mar. 18, 1931. [122]

[Title of Court and Cause—No. L.-4502.]

STIPULATION RE STATEMENT OF EVIDENCE.

IT IS HEREBY STIPULATED by and between J. A. Adams and Sam M. Driver, attorneys for petitioner, and Berkey & Cowan, attorneys for respondents, that the original statements of evidence in the above-entitled cause may be sent by the Clerk of the United States District Court for the Eastern District of Washington, to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, without requiring the same to be printed.

IT IS FURTHER STIPULATED that the statement of evidence on order of necessity may be used jointly in cases Number L.-4501 and L.-4502.

IT IS FURTHER STIPULATED that for the purpose of appeal, that said causes Number L.-4501 and L.-4502 may be heard together, and the briefs in one case shall be considered in both, without the requirement of printing and filing separate briefs in each case.

J. A. ADAMS,

SAM M. DRIVER,

Attorneys for Petitioner.

P. O. Wenatchee, Washington.

BERKEY & COWAN,

Attorneys for Respondents.

P. O. Spokane, Washington.

[Title of Court and Cause—No. L.-4502.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Eastern District of Washington,—ss.

I, W. S. Coey, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing typewritten pages, numbered from 1 to 123, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above-entitled cause, as are necessary to the hearing of the appeal therein in the United States Circuit Court of Appeals, as called for by the appellants in their praecipes, as the same remain of record, and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the judgment and decree of the District Court of the United States for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause, and the original statement of evidence referred to in the stipulation filed in this court on March 17, 1931. [124]

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of Twenty-seven and 40/100 Dollars (\$27.40), and

that the said sum has been paid to me by Messrs. Berkey & Cowan, attorneys for respondents and appellants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at Spokane, in said district this 27 day of March, 1931.

[Seal]

W. S. COEY,
Clerk. [125]

[Endorsed]: No. 6430. United States Circuit Court of Appeals for the Ninth Circuit. Alice Barbee Wick, Theodore S. Tettermer and Jane Doe Tettermer, His Wife (True Christian Name Unknown), Appellants, vs. Chelan County, Washington, a Municipal Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed April 6, 1931.

PAUL P. O'BRIEN,
Clerk of the United States Circuit of Appeals for
the Ninth Circuit.

